

CHAPTER.....

AN ACT relating to the military; revising and updating certain provisions governing military justice; revising and updating certain other provisions governing the Office of the Military, Nevada National Guard, Nevada National Guard Reserve and volunteer military organizations licensed by the Governor; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law contains the Nevada Code of Military Justice, which provides a system of adjudicating guilt and punishing offenders within the Nevada National Guard. (NRS 412.196-412.584) **Sections 8, 65 and 66** of this bill specify personal and subject matter jurisdiction under the Code. Existing law allows commanding officers to impose certain types of nonjudicial punishment upon servicemen and servicewomen under their command. (NRS 412.286-412.302) **Sections 10-17, 67-70, 107 and 110** of this bill modify provisions governing nonjudicial punishment.

Existing law provides for courts-martial to adjudicate certain offenses under the Code. (NRS 412.304-412.448) **Sections 18-32, 72-97 and 100-103** of this bill revise provisions governing courts-martial. **Sections 30 and 31** provide that certain persons found incompetent to stand trial by court-martial or not guilty by reason of lack of mental responsibility in court-martial proceedings are committed to the care of a suitable facility. **Section 97** gives general courts-martial the authority to impose a punishment of confinement for up to 10 years. Convicted servicemen and servicewomen serve their confinement in civil jails, detention facilities, penitentiaries or certain prisons. (NRS 412.276, 412.414)

Existing law specifies military offenses triable by courts-martial. (NRS 412.452-412.562) **Sections 33-40** of this bill add to this list of offenses acting as a spy, espionage, possession of controlled substances, sexual assault, stalking, larceny, wrongful appropriation, extortion and assault.

Section 41 of this bill specifies who may administer oaths for the purposes of military administration, including military justice. **Sections 42 and 43** of this bill specify how the Code is to be construed.

Existing law establishes the Nevada National Guard as an organized body of enlisted personnel and commissioned officers. (NRS 412.026) **Section 44** of this bill establishes the Nevada Enlisted Association of the National Guard of the United States, a group of current and retired enlisted personnel of the Nevada National Guard.

Section 53 of this bill conditions a program promoting rifle practice on the availability of funds from the State or Federal Government. (NRS 412.088)

Existing law provides that the Nevada National Guard cannot discriminate on the basis of race, creed, color, sex or national origin. (NRS 412.116) **Section 54** of this bill prohibits discrimination on the basis of gender or sexual orientation as well, while deleting language specifically prohibiting discrimination based on sex.

Section 57 of this bill provides that members of the Nevada National Guard deployed to perform an emergency are to be compensated according to their respective military grade and pay status instead of receiving compensation equal to that received by the main labor force in the service of the State or Federal Government as they do under existing law. (NRS 412.138)



Section 106 of this bill modifies the procedure for making a complaint against a commanding officer. (NRS 412.568) **Section 108** of this bill exempts persons subject to the Code from liability for acts or omissions performed as part of their duties under the Code. **Section 110** of this bill repeals allowances provided to servicemen and servicewomen of the Nevada National Guard for uniforms and equipment.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 412 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 44, inclusive, of this act.

Sec. 2. *“Nonjudicial punishment” means punishment that is imposed:*

1. Pursuant to NRS 412.286 to 412.302, inclusive, and sections 10 to 17, inclusive, of this act;

2. Against an accused, through the chain of command, by the accused’s commanding officer or other officer in charge; and

3. Without the need to convene a court-martial.

Sec. 3. *“Principal assistant” means a commissioned officer of the state military forces serving immediately subordinate to the convening authority.*

Sec. 4. *“Restraint-of-freedom punishments” means restriction and arrest in quarters.*

Sec. 5. *“Senior force judge advocate” means the senior judge advocate of the commanding officer of the same force of the state military forces as the accused, and who is that commanding officer’s chief legal advisor.*

Sec. 6. *“State military forces” means the members of the Nevada National Guard, reservists of the Nevada National Guard, and volunteer military organizations licensed by the Governor pursuant to NRS 412.126 to organize, drill and bear arms as volunteer military companies or volunteer military organizations.*

Sec. 7. *1. The principal assistant shall assume command in the event of the commanding officer’s death, prolonged absence or disability.*

2. In the case of the Nevada Air National Guard, the principal assistant may include an officer who lacks an aeronautical rating, as defined in Air Force Instruction 11-402 § 2.2, as it may be amended or replaced, and is serving in a position immediately subordinate to the convening authority.



3. *Any delegation of authority to a principal assistant must be in writing, unless exigencies prevent such written delegation. If exigencies prevent written delegation, verbal authorization is sufficient and must be reduced to writing as soon as possible thereafter.*

Sec. 8. 1. *The following persons are subject to jurisdiction under this Code:*

(a) *Any person described in subsection 1 of NRS 412.254 or who is a member of the state military forces; and*

(b) *Any person who is in the custody of the state military forces before trial or who is serving a sentence imposed by a court-martial.*

2. *Any person described in subsection 1 is subject to this Code until the person's active service has been terminated in accordance with the law or regulations of the state military forces and the National Guard Bureau and the regulations applicable to that person's service.*

Sec. 9. *No member of the state military forces may be placed in confinement in immediate association with:*

1. *An enemy prisoner; or*

2. *A person who is a citizen of a country other than the United States and who is not a member of the Armed Forces of the United States.*

Sec. 10. 1. *Each commanding officer shall maintain good order and discipline in his or her command. If a commanding officer determines that he or she can maintain good order and discipline through effective leadership, including, without limitation, administrative and corrective measures, he or she must do so. If a commanding officer determines that he or she cannot maintain good order and discipline through effective leadership, including, without limitation, administrative and corrective measures, he or she may pursue punitive measures.*

2. *In determining the appropriate method of punishment, a commanding officer must consider, without limitation:*

(a) *The nature of the offense;*

(b) *The nature of the punishment;*

(c) *The record of the offending serviceman or servicewoman;*

(d) *The need to maintain good order and discipline; and*

(e) *The likely effect of the punitive measures on the record of the offending serviceman or servicewoman.*

3. *Each commanding officer shall, insofar as is practicable, take action to ensure that:*

(a) *Military justice is exercised promptly and fairly; and*



(b) Each matter of a disciplinary or punitive nature is resolved:

- (1) At the lowest appropriate level; and*
- (2) Using the least severe punishment appropriate to the offense.*

Sec. 11. *1. This section sets forth the law, policies and procedures for nonjudicial punishment in the state military forces. Unless modified by this Code, the procedures contained in Chapter 3 of Army Regulation 27-10 and Air Force Instruction 51-202, as they may be amended or replaced, apply to nonjudicial punishment in this Code.*

2. Each commanding officer shall use nonjudicial punishment as an essential and prompt means of maintaining good order and discipline, and to promote positive behavior and changes in servicemen and servicewomen without the stigma of a court-martial conviction.

3. No superior may:

(a) Direct that a subordinate authority impose nonjudicial punishment in a particular case; or

(b) Issue regulations or guidelines which suggest to subordinate authorities that certain categories of minor offenses be disposed of by nonjudicial punishment instead of by court-martial or disposed of by administrative corrective measures, or that predetermined types or amounts of punishment be imposed for certain classifications of offenses that the subordinate authority considers appropriate for disposition by nonjudicial punishment.

4. Nonjudicial punishment may be imposed for a minor offense. Whether an offense is minor must be determined by, without limitation:

(a) The nature of the offense and the circumstances surrounding the commission of the offense;

(b) The age, rank, duty assignment, record and experience of the offender; and

(c) The maximum possible sentence that could be imposed for the offense if tried by general court-martial.

5. The decision as to whether an offense is minor is a matter of discretion for the commanding officer imposing nonjudicial punishment. The imposition and enforcement of nonjudicial punishment pursuant to NRS 412.286 to 412.302, inclusive, and sections 10 to 17, inclusive, of this act is not a bar to a trial by court-martial or other legal proceeding for a serious crime or offense growing out of the same act or omission and not properly



punishable pursuant to NRS 412.286 to 412.302, inclusive, and sections 10 to 17, inclusive, of this act, but the fact that a nonjudicial punishment has been enforced pursuant thereto may be shown by the accused at trial and when so shown must be considered in determining the severity of punishment to be adjudged in the event of a finding of guilty.

Sec. 12. Failure to comply with any procedural provision of this Code does not invalidate a punishment imposed pursuant to the Code, unless the error materially prejudiced a substantial right of the servicemen or servicewomen on whom the punishment was imposed.

Sec. 13. 1. Commanding officers have authority to impose nonjudicial punishment upon military personnel under their command. The authority of a commanding officer to impose nonjudicial punishment for certain types of offenses or certain categories of persons, or to impose certain types of punishment in specific cases, may be limited or withheld by a superior officer.

2. Only the Governor and general officers in command may delegate their authority under subsection 1 to a principal assistant. This limitation on delegation of authority does not remove the authority of other commanding officers authorized to act under this Code, but such other commanding officers may not delegate that authority. A commanding officer superior to the commanding officer having authority to impose nonjudicial punishment may withhold that authority.

3. A commanding officer at any echelon may withhold from any subordinate commanding officer all or part of the authority prescribed in subsection 1, including, without limitation, the authority to impose nonjudicial punishment for specific types of offenses that the subordinate would otherwise impose. When authority is withheld, such action should be explained in a clearly defined writing or directive. The original of the writing or directive must be filed in the office of the applicable judge advocate who serves the commanding officer whose authority has been withheld. Any such withholding remains in effect when a new commanding officer is appointed or assumes command, until and unless expressly revoked by the superior commanding officer. Any such action should be addressed to the position held by the commanding officer whose authority has been withheld, not to the commanding officer by name.

Sec. 14. An accused facing nonjudicial punishment has the right to demand a trial by court-martial only if the commanding officer who initiated the proceeding for nonjudicial punishment



elects to impose restraint-of-freedom punishments. If, before an offer of nonjudicial punishment is made, the commanding officer elects not to impose restraint-of-freedom punishments, the accused has no right to demand a trial by court-martial. If the commanding officer does not advise the accused serviceman or servicewoman of his or her right to reject the nonjudicial punishment and demand a trial by court-martial on initiation of the nonjudicial punishment action, the commanding officer thereby waives the right to retain the restraint-of-freedom punishments.

Sec. 15. *1. A commanding officer, after preliminary inquiry, may use a summarized proceeding if it is determined that punishment will not include restraint-of-freedom punishments.*

2. A Summarized Record of Proceedings, under Article 15, UCMJ, as contained in Army Regulation 27-10, or AF Form 3070, as they may be amended or replaced, must be used to record the summarized nonjudicial punishment proceedings. However, the notification of the right to demand a trial by court-martial must be stricken from the form.

3. If a commanding officer who intends to impose nonjudicial punishment determines that a summarized proceeding is appropriate, the accused must be notified in writing of:

(a) The intent of the commanding officer to initiate nonjudicial punishment;

(b) The intent of the commanding officer to use summarized proceedings;

(c) The lack of a right on the part of the accused to demand a trial by court-martial;

(d) The maximum punishments allowable pursuant to the summarized proceeding;

(e) The right of the accused to remain silent;

(f) Each offense that the accused has allegedly committed with reference to the sections of the law allegedly violated;

(g) The right of the accused to confront witnesses, examine the evidence and submit matters in defense, extenuation and mitigation; and

(h) The right of the accused to appeal within the period set forth in subsection 4 of NRS 412.296.

4. If a commanding officer determines that a summarized proceeding is appropriate, the accused does not have the right to consult with counsel before the hearing and the accused does not have the right to counsel or a spokesperson during the hearing.



5. *Consistent with the regulations applicable to the accused's service, if a hearing is scheduled, notification of the date and time of the hearing may be made orally or in writing. The hearing must be scheduled not earlier than 24 hours and not later than 60 days after the accused receives notification pursuant to subsection 3 of the intent of the commanding officer to impose nonjudicial punishment.*

Sec. 16. 1. *A commanding officer who, after preliminary inquiry, determines that the punishment options will include restraint-of-freedom punishments shall use a formal proceeding.*

2. *If the commanding officer determines that a formal proceeding is appropriate, the accused must be notified in writing of:*

(a) *The intent of the commanding officer to initiate nonjudicial punishment;*

(b) *The intent of the commanding officer to use a formal proceeding;*

(c) *The maximum punishments allowable under the formal proceeding;*

(d) *The right of the accused to remain silent;*

(e) *Each offense that the accused has allegedly committed with reference to sections of the law that are alleged to have been violated;*

(f) *The right of the accused to confront witnesses, examine the evidence and submit matters in defense, extenuation and mitigation;*

(g) *The right of the accused to consult with a judge advocate and the location of such counsel;*

(h) *The right of the accused to demand a trial by court-martial at any time before the imposition of the nonjudicial punishment; and*

(i) *The right of the accused to appeal.*

3. *If the commanding officer determines that a formal proceeding is appropriate, the accused must be given a reasonable time to consult with counsel, to gather matters in defense, extenuation and mitigation and to decide whether to accept the nonjudicial punishment or demand a trial by court-martial. This decision period must be at least 48 hours, depending on the availability of counsel, but such period may be extended at the request of the accused.*

4. *The commanding officer is not bound by the formal rules of evidence before courts-martial and may consider any matter the commanding officer reasonably believes is relevant to the offense.*



Sec. 17. 1. *A punishment may be announced at the next formation of the unit of the accused after the punishment is imposed or, if appealed, after the decision on the appeal. The announcement may also be posted on a bulletin board of the unit or published in a newsletter or web publication of the unit.*

2. The announcement of the results of punishments may be used to mitigate perceptions of unfairness of punishment and to serve as a deterrent to similar misconduct by other servicemen and servicewomen. The announcement of punishments must not be undertaken to invoke public embarrassment or scorn of the serviceman or servicewoman so punished. Accordingly, the practice of announcing punishments must be undertaken in a consistent manner to avoid the appearance of favoritism or vindictiveness.

3. In deciding whether to announce the punishment of servicemen and servicewomen in the grade of E-5 or above, the commanding officer shall consider the following factors:

- (a) The nature of the offense;*
- (b) The military record and duty position of the serviceman or servicewoman being punished;*
- (c) The deterrent effect of announcing the punishment;*
- (d) The impact on the morale or mission of the applicable unit;*
- (e) The impact on the victim, if any, of the serviceman's or servicewoman's offense; and*
- (f) The impact on the ability of the serviceman or servicewoman to lead.*

Sec. 18. 1. *A military judge must be:*

- (a) An active or retired commissioned officer of an organized state military force or in federal service;*
- (b) One of the following:*
 - (1) A member in good standing of the State Bar of Nevada;*
 - (2) A member of the bar of a federal court for at least 5 years; or*
 - (3) A person who is licensed to practice law in a state other than the State of Nevada, certified by the Adjutant General of the state in which the military judge is licensed, and a member in good standing therein, and who has received permission from the State Bar of Nevada to sit as a military judge; and*
- (c) Certified as qualified for duty as a military judge by the senior force judge advocate of the same military force of which the accused is a member.*

2. If a military judge is not a member of the State Bar of Nevada, the military judge shall be deemed admitted pro hac vice,



subject to filing with the senior force judge advocate of the same military force of which the accused is a member a certificate setting forth that the other qualifications provided in subsection 1 have been met.

Sec. 19. *Each component or branch of the state military forces has court-martial jurisdiction over all servicemen and servicewomen of that particular component or branch who are subject to this Code. Additionally, the Nevada Army National Guard and Nevada Air National Guard have court-martial jurisdiction over all servicemen and servicewomen subject to this Code.*

Sec. 20. *1. A person may not be tried or adjudged to punishment under this Code while incompetent.*

2. For the purposes of this section, a person is incompetent when presently suffering from a mental disease or defect rendering the person unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case.

Sec. 21. *1. It is an affirmative defense in trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality of the wrongfulness of his or her acts and, thus, lacked mental responsibility for those acts. Mental disease or defect does not otherwise constitute a defense.*

2. The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

3. Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused:

(a) Guilty;

(b) Not guilty; or

(c) Not guilty by reason of lack of mental responsibility.

↪ Notwithstanding the provisions of NRS 412.396, the accused may only be found not guilty by reason of lack of mental responsibility pursuant to paragraph (c) if a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

4. The provisions of this subsection and subsection 3 do not apply to a court-martial composed only of a military judge. In the



case of a court-martial composed only of a military judge or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused:

- (a) Guilty;*
- (b) Not guilty; or*
- (c) Not guilty only by lack of mental responsibility.*

↪ Notwithstanding the provisions of NRS 412.396, the accused may be found not guilty only by reason of lack of mental responsibility pursuant to paragraph (c) only if the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

Sec. 22. *1. On application by an accused who is under a sentence of confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned may, in the sole discretion of that person, defer service of the sentence of confinement. The deferment must terminate when the sentence is ordered executed. The person who granted the deferment may rescind the deferment at any time. If the accused is no longer under the jurisdiction of the person who granted the deferment, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned may rescind the deferment at any time.*

2. In any case in which a court-martial sentences an accused referred to in subsection 1 to confinement, the convening authority may defer the service of the sentence of confinement without the consent of the accused until after the accused has been permanently released to the state military forces by a state, the United States or a foreign country.

3. Subsection 1 applies to a person subject to this Code who:

(a) While in the custody of a state, the United States or a foreign country is temporarily returned by that state, the United States or a foreign country to the state military forces for trial by court-martial; and

(b) After the court-martial described in paragraph (a), is returned to that state, the United States or a foreign country under the authority of a mutual agreement or treaty, as the case may be.

4. In any case in which a court-martial sentences an accused to confinement and the sentence of confinement has been ordered executed pending review, the Adjutant General may defer further



service of the sentence of confinement while that review is pending.

5. As used in this section, the term "state" includes any state, the District of Columbia and any commonwealth, territory or possession of the United States.

Sec. 23. 1. This section applies to any sentence that includes:

(a) Confinement for more than 6 months; or

(b) Confinement for 6 months or less and a dishonorable discharge, bad-conduct discharge or dismissal.

2. A sentence described in subsection 1 must result in the forfeiture of pay, or of pay and allowances, due the sentenced serviceman or servicewoman during any period of confinement or parole. The forfeiture required pursuant to this subsection must take effect on the date determined under this Code and may be deferred as provided by law. In the case of a general court-martial, all pay and allowances due the sentenced serviceman or servicewoman during such period must be forfeited. In the case of a special court-martial, two-thirds of all pay due the sentenced serviceman or servicewoman during such period must be forfeited.

3. In a case involving an accused who has dependents, the convening authority or other person acting under this Code may waive any or all of the forfeitures of pay and allowances required by subsection 2 for a period not to exceed 6 months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited must be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

4. If the sentence of a serviceman or servicewoman who forfeits pay and allowances under subsection 2 is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection 1, the serviceman or servicewoman must be paid the pay and allowances which the serviceman or servicewoman would otherwise have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

Sec. 24. 1. In each case subject to appellate review pursuant to NRS 412.422, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to such appeal. Such a withdrawal must be signed by both the accused and defense counsel and must be filed in accordance with appellate procedures as provided by law.



2. *The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by law.*

Sec. 25. 1. *In a trial by court-martial in which a punitive discharge may be adjudged, the State may not appeal a finding of not guilty with respect to the charge or specification by the members of the court-martial, or by a judge in a bench trial, provided that the finding is not made in reconsideration of a sentence or a finding of guilty. The State may appeal the following:*

(a) *An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification;*

(b) *An order or ruling which excludes evidence that is substantial proof of a fact material to the proceeding;*

(c) *An order or ruling which directs the disclosure of classified information;*

(d) *An order or ruling which imposes sanctions for nondisclosure of classified information;*

(e) *A refusal of the military judge to issue a protective order sought by the State to prevent the disclosure of classified information; and*

(f) *A refusal by the military judge to enforce an order described in paragraph (e) that has been previously issued by appropriate authority.*

2. *An appeal of an order or ruling by the State may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours after the order or ruling. Such notice must include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.*

3. *The State must diligently prosecute an appeal under this section as provided by law.*

4. *An appeal under this section must be forwarded to the court prescribed in this Code. In ruling on an appeal under this section, the court may act only with respect to matters of law.*

5. *Any period of delay resulting from an appeal under this section must be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.*

Sec. 26. 1. *The senior force judge advocate or his or her designee shall review each general and special court-martial case*



in which there has been a finding of guilty. The senior force judge advocate or designee may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge or counsel or has otherwise acted on behalf of the prosecution or defense. The review of the senior force judge advocate or designee must be in writing and must contain the following:

(a) Conclusions as to whether:

(1) The court has jurisdiction over the accused and the offense;

(2) The charge and specification stated an offense; and

(3) The sentence was within the limits prescribed by law.

(b) A response to each allegation of error made in writing by the accused.

(c) If the case is sent for action pursuant to subsection 2, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

2. The record of trial and related documents in each case reviewed under subsection 1 must be sent for action to the Adjutant General if:

(a) The senior force judge advocate who reviewed the case recommends corrective action;

(b) The sentence approved includes dismissal, a bad-conduct discharge, dishonorable discharge or confinement for more than 6 months; or

(c) Such action is otherwise required by regulations of the Adjutant General.

3. The Adjutant General may:

(a) Disapprove or approve the findings or sentence, in whole or in part;

(b) Remit, commute or suspend the sentence in whole or in part;

(c) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings or on the sentence, or both; or

(d) Dismiss the charges.

4. If a rehearing is ordered but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

5. If the opinion of the senior force judge advocate or designee, in the review under subsection 1, is that corrective action is required as a matter of law and if the Adjutant General does not



take action that is at least as favorable to the accused as that recommended by the senior force judge advocate or designee, the record of trial and action thereon must be sent to the Governor for review and action as deemed appropriate.

6. The senior force judge advocate or his or her designee may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate or designee may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate or designee shall limit any review under this subsection to questions of subject matter jurisdiction as that jurisdiction is set forth in NRS 412.256.

7. The record of trial and related documents in each case reviewed under subsection 6 must be sent for action to the Adjutant General.

8. The Adjutant General may:

(a) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the government, as the Adjutant General deems appropriate; or

(b) Return the record of trial and related documents to the senior force judge advocate for appeal by the government as provided by law.

Sec. 27. 1. The senior force judge advocate shall detail a judge advocate as appellate government counsel to represent the State in the review or appeal of cases specified in NRS 412.432 and before any federal or state court when requested to do so by the Attorney General. Appellate counsel representing the government must be members in good standing of the State Bar of Nevada.

2. Upon an appeal by the State of Nevada, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

3. Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority.

4. Upon the request of an accused entitled to be so represented, the senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections 2 and 3.

5. An accused may be represented by civilian appellate counsel at no expense to the State.



Sec. 28. *Decisions of a court-martial are from a court with jurisdiction to issue felony convictions, and appeals are to the court provided by the law of the state in which the court-martial was held. Appeals are to be made to courts of the state where a court-martial is held only after the exhaustion of the review conducted pursuant to NRS 412.418 to 412.438, inclusive, and sections 24 to 28, inclusive, of this act. The appellate procedures to be followed must be those provided by law for the appeal of criminal cases thereto.*

Sec. 29. *Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of any action under NRS 412.304 to 412.448, inclusive, and sections 18 to 32, inclusive, of this act, if the sentence includes an unsuspended dismissal, an unsuspended dishonorable discharge or a bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved or at any time after such date, and such leave may be continued until the date on which action under NRS 412.304 to 412.448, inclusive, and sections 18 to 32, inclusive, of this act is completed or may be terminated at an earlier time.*

Sec. 30. *1. Unless otherwise stated in this section, in the case of a person determined pursuant to section 20 of this act to be incompetent, the provisions of NRS 178.3981 to 178.4715, inclusive, are applicable. References to the court in NRS 178.3981 to 178.4715, inclusive, and to the judge of such court, shall be deemed to refer to the convening authority having authority to convene a general court-martial for that person. However, if the person is no longer subject to this Code at a time relevant to the application to the person of the relevant provisions of NRS 178.3981 to 178.4715, inclusive, the state trial court with felony jurisdiction in the county where the person is committed or otherwise may be found retains the powers specified in NRS 178.3981 to 178.4715, inclusive, as if it were the court that ordered the commitment of the person.*

2. When the director of a facility in which a person is hospitalized pursuant to the actions taken by the convening authority having authority to convene a general court-martial for that person determines that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the convening authority having authority to convene a general court-martial for the person, the person's counsel and the authority



having custody of the person. The authority having custody of the person may retain custody of the person for not more than 30 days after receiving notification that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case.

3. Upon receipt of a notification pursuant to subsection 2, the convening authority having authority to convene a general court-martial for the person shall promptly take custody of the person unless the person to which the notification applies is no longer subject to this Code. If the person is no longer subject to this Code, the state trial court with felony jurisdiction in the county where the person is committed or otherwise may be found may take any action within the authority of that court that the court considers appropriate regarding the person.

Sec. 31. *1. If a person is found by a court-martial not guilty by reason of lack of mental responsibility or not guilty only by reason of lack of mental responsibility, the person must be committed to a suitable facility until the person is eligible for release through the procedures specified in NRS 178.467 to 178.471, inclusive.*

2. The court-martial must conduct a hearing on the mental condition of the person in accordance with NRS 175.539. A report of the results of the hearing must be made to the convening authority having authority to convene a general court-martial for the person.

3. If the court-martial finds by clear and convincing evidence that the person is a person with mental illness, the convening authority having authority to convene a general court-martial for the person shall commit the person to the custody of a suitable facility until the person is eligible for release through the procedures specified in NRS 178.467 to 178.471, inclusive.

4. Except as otherwise provided by law, the provisions of NRS 178.467 to 178.471, inclusive, apply in the case of a person committed to the custody of a suitable facility pursuant to this section, except that the convening authority having authority to convene a general court-martial for the person shall be considered the court that ordered the person's commitment.

Sec. 32. *At a hearing ordered pursuant to section 30 or 31 of this act, the person whose mental condition is the subject of the hearing must be represented by counsel and, if the person is financially unable to obtain adequate representation, counsel must be appointed for the person pursuant to NRS 412.364 if the*



hearing is conducted by a court-martial or pursuant to NRS 171.188 if the hearing is conducted by a court of this State. The person must be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his or her behalf, and to confront and cross-examine witnesses who appear at the hearing.

Sec. 33. *Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel or aircraft within the control or jurisdiction of any of the Armed Forces of the United States or in or about any shipyard, any manufacturing or industrial plant or any other place or institution engaged in work in aid of the prosecution of the war by the United States or elsewhere must be tried by a general court-martial.*

Sec. 34. 1. *Any person subject to this Code who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, directly or indirectly communicates, delivers or transmits, or attempts to communicate, deliver or transmit, any object or information to any entity shall be punished as a court-martial may direct.*

2. A person accused pursuant to this section must be given broad latitude to present matters in extenuation and mitigation.

3. Findings made pursuant to this section may be based on evidence introduced on the issue of guilt or innocence, and evidence introduced during the sentencing proceeding.

4. As used in this section:

(a) "Entity" means:

(1) A foreign government;

(2) A faction, party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(3) A representative, officer, agent, employee, subject or citizen of a government, faction, party or force that is described in subparagraph (1) or (2).

(b) "Object or information" includes, without limitation, a document, writing, code book, signal book, sketch, photograph, photolineart negative, blueprint, plan, map, model, note, instrument, appliance or other information relating to national defense.

Sec. 35. 1. *Any person subject to this Code who wrongfully uses, possesses, manufactures, distributes, imports into customs territory of the United States, exports from the United States or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the Armed Forces of the United States or*



of any state military forces a substance described in subsection 2 shall be punished as a court-martial may direct.

2. The substances referred to in subsection 1 include, without limitation:

(a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid and marijuana, and any compound or derivative of any such substance.

(b) Any substance not specified in paragraph (a) that is listed in a schedule of controlled substances prescribed by the President of the United States for the purposes of the Uniform Code of Military Justice of the Armed Forces of the United States, 10 U.S.C. §§ 801 et seq.

(c) Any other substance not referenced pursuant to paragraph (a) or (b) and that is listed in schedules I to V, inclusive, of 21 U.S.C. § 812.

Sec. 36. *1. Any person subject to this Code who engages in or causes nonconsensual sexual contact with or by another person, without legal justification or lawful authorization, is guilty of sexual assault or sexual misconduct and shall be punished by way of nonjudicial punishment or as a court-martial may direct.*

2. Neither consent nor mistake of fact as to consent is an affirmative defense in a prosecution for sexual assault or sexual misconduct.

3. In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

4. As used in this section:

(a) “Nonconsensual” means:

(1) Using force against the other person before consent or to gain consent;

(2) Causing grievous bodily harm to a person;

(3) Threatening or placing a person in fear to gain consent;

(4) Rendering a person unconscious;

(5) Administering to a person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

(6) Receiving verbal nonconsent before the act; or

(7) Lack of permission given.

(b) “Sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin,



breast, inner thigh or buttocks of another person or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh or buttocks of any person, with an intent to abuse, humiliate or degrade any person or to arouse or gratify the sexual desire of any person.

Sec. 37. 1. Any person subject to this Code:

(a) Who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including, without limitation, sexual assault, to himself or herself or a member of his or her immediate family;

(b) Who has knowledge or should have knowledge that the specific person will be placed in reasonable fear of death or bodily harm, including, without limitation, sexual assault, to himself or herself or a member of his or her immediate family; and

(c) Whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family,

↪ is guilty of stalking and shall be punished as a court-martial may direct.

2. As used in this section:

(a) "Course of conduct" means a repeated:

(1) Maintenance of visual or physical proximity to a specific person; or

(2) Conveyance of verbal threats, written threats or threats implied by conduct or a combination of such threats, directed at or toward a specific person.

(b) "Immediate family," in the case of a specific person, means a spouse, parent, child or sibling of that person or any other family member, relative or intimate partner of the person who regularly resides in the household of the person or who regularly engages in contact with the person.

(c) "Repeated," with respect to conduct, means two or more occasions of such conduct.

Sec. 38. 1. Any person subject to this Code who wrongfully takes, obtains or withholds by any means, from the possession of the owner or of any other person, any money, personal property or article of value of any kind:

(a) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(b) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his



or her own use or the use of another person other than the owner, is guilty of wrongful appropriation.

2. Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

Sec. 39. *Any person subject to this Code who communicates threats to another person with the intention thereby to obtain anything of value or any acquaintance, advantage or immunity is guilty of extortion and shall be punished as a court-martial may direct.*

Sec. 40. *Any person subject to this Code who:*

1. Attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

2. Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon is guilty of aggravated assault and shall be punished as a court-martial may direct.

Sec. 41. *1. The following persons may administer oaths for the purposes of military administration, including military justice:*

(a) Any judge advocate;

(b) Any summary court-martial;

(c) Any adjutant, assistant adjutant, acting adjutant and personnel adjutant;

(d) Any commanding officer of the naval militia; and

(e) Any other person so designated by regulations of the Armed Forces of the United States or by the laws of this State.

2. The following persons may administer oaths necessary in the performance of their duties:

(a) The president, military judge and trial counsel for all general and special courts-martial;

(b) The president and the counsel for the court of any court of inquiry;

(c) Any officer designated to take a deposition;

(d) Any person detailed to conduct an investigation;

(e) Any recruiting officer; and

(f) Any other person so designated by regulations of the Armed Forces of the United States or by the laws of this State.

3. The signature without seal of any person, together with the title of his or her office, is prima facie evidence of the authority of that person.

Sec. 42. *This Code shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, 10 U.S.C. §§ 801 et seq.*



Sec. 43. *The provisions of this Code are hereby declared independent and severable and the invalidity, if any, or part or feature thereof shall not affect or render the remainder of such Code invalid or inoperative.*

Sec. 44. *Enlisted personnel of the Nevada National Guard, including retired enlisted members thereof, may organize themselves into an association, which is to be named the Nevada Enlisted Association of the National Guard of the United States. The Association may adopt bylaws not inconsistent with the statutes of this State and may alter and amend such bylaws. The Association may, upon request, provide advice and assistance to the Adjutant General regarding matters of concern to enlisted personnel of the Nevada National Guard.*

Sec. 45. NRS 412.014 is hereby amended to read as follows:

412.014 "Office" means the Office of the Military ~~+~~ , *including, without limitation, the Nevada Army National Guard and the Nevada Air National Guard.*

Sec. 46. NRS 412.022 is hereby amended to read as follows:

412.022 "Reservists" means members of the *reservists of the Nevada National Guard* ~~{Reserve-}~~ *that are licensed by the Governor or by his or her designee.*

Sec. 47. NRS 412.024 is hereby amended to read as follows:

412.024 "Volunteers" means members of volunteer *military* organizations licensed by the Governor.

Sec. 48. NRS 412.026 is hereby amended to read as follows:

412.026 1. The militia of the State is composed of the Nevada National Guard and, when called into active service by the Governor, *reservists to* the Nevada National Guard ~~{Reserve}~~ and any volunteer *military* organizations licensed by the Governor.

2. The Nevada National Guard is an organized body of enlisted personnel between the ages of 17 and 64 years and commissioned officers between the ages of 18 and 64 years, divided into the Nevada Army National Guard and the Nevada Air National Guard.

3. ~~{The Nevada National Guard Reserve is an unorganized body comprising all able-bodied residents of the State between the ages of 17 and 64 years who:~~

- ~~—(a) Are not serving in any force of the Nevada National Guard;~~
- ~~—(b) Are or have declared their intention to become citizens of the United States; and~~
- ~~—(c) Are not exempted from military duty under the laws of this state or the United States.~~

~~—4.}~~ If a volunteer *military* organization is formed and becomes licensed by the Governor, it shall consist of an organized body of



able-bodied residents of the State between the ages of 17 and 64 years who are not serving in any force of the Nevada National Guard and who are or who have declared their intention to become citizens of the United States.

Sec. 49. NRS 412.044 is hereby amended to read as follows:

412.044 1. The Governor shall appoint an Adjutant General who shall hold office for a 4-year term or until relieved by reason of resignation, withdrawal of federal recognition or for cause to be determined by a court-martial. The current term of an Adjutant General shall continue until its prescribed expiration date while such Adjutant General is serving in a federal active duty status under an order or call by the President of the United States.

2. To be eligible for appointment to the office of Adjutant General, a person must be an officer of the Nevada National Guard, federally recognized in the grade of lieutenant colonel or higher, and must have completed at least 6 ~~years~~ *years of* service in the Nevada National Guard as a federally recognized officer.

3. The Adjutant General may be appointed in the grade of lieutenant colonel or higher, but not exceeding that of major general. If appointed in a lower grade, the Adjutant General may be promoted by the Governor to any grade not exceeding that of major general.

Sec. 50. NRS 412.048 is hereby amended to read as follows:

412.048 The Adjutant General shall serve as the Chief of Staff to the Governor, the Director of the Office of the Military and the Commander of the Nevada National Guard, and:

1. Is responsible, under the direction of the Governor, for the supervision of all matters pertaining to the administration, discipline, mobilization, organization and training of the Nevada National Guard, *reservists of the* Nevada National Guard ~~Reserve~~ and volunteer *military* organizations licensed by the Governor.

2. Shall perform all duties required of him or her by the laws of the United States and of the State of Nevada, and the regulations issued thereunder.

3. Shall employ such deputies, assistants and other personnel as he or she deems necessary to assist in the performance of those duties required of the Adjutant General as Director of the Office. The Adjutant General may so employ either members of the Nevada National Guard or civilian personnel. The duties of all deputies, assistants and other personnel appointed must be prescribed by Office regulations. All such employees are in the unclassified service of the State except civilian, clerical, administrative,



maintenance and custodial employees who are in the classified service of the State.

Sec. 51. NRS 412.054 is hereby amended to read as follows:

412.054 1. The Adjutant General may appoint two Assistant Adjutants General, one each from the Nevada Army National Guard and the Nevada Air National Guard, who may serve as Chief of Staff for Army and Chief of Staff for Air, respectively, at the pleasure of the Adjutant General or until relieved by reason of resignation, withdrawal of federal recognition or for cause to be determined by a court-martial.

2. To be eligible for appointment to the office of Assistant Adjutant General, a person must be an officer of the Nevada National Guard, federally recognized in the grade of lieutenant colonel or higher, and must have completed at least 6 ~~years~~² *years of* service in the Nevada National Guard as a federally recognized officer . ~~1, 3 years of which must be immediately before the appointment.~~

3. An Assistant Adjutant General may be appointed in the grade of lieutenant colonel or higher, but not exceeding that of brigadier general. An Assistant Adjutant General may be promoted by the Governor to any grade not exceeding that of brigadier general.

4. The Assistant Adjutants General shall perform such duties as may be assigned by the Adjutant General.

5. Whoever serves as Chief of Staff for Army is in the unclassified service of the State and, except as otherwise provided in NRS 284.143, shall not hold any other city, county, state or federal office of profit.

6. In the event of the absence or inability of the Adjutant General to perform his or her duties, the Adjutant General shall designate by Office regulations:

(a) One of the Assistant Adjutants General to perform the duties of his or her office as Acting Adjutant General.

(b) If neither Assistant Adjutant General is available, any national guard officer to be the Acting Adjutant General.

➤ The designated Assistant Adjutant General or designated officer may continue to receive his or her authorized salary while so serving as Acting Adjutant General, and shall so serve until the Adjutant General is again able to perform the duties of the office, or if the office is vacant, until an Adjutant General is regularly appointed and qualified.



Sec. 52. NRS 412.076 is hereby amended to read as follows:

412.076 1. Members of the militia of the State who are ordered to state active duty under the provisions of this chapter shall be deemed to be temporary employees of the State ~~+~~ *for the purposes of subsection 9 of NRS 286.297.*

2. Regular employees of the Office may be ordered to state active duty under this chapter without jeopardizing their status as regular employees. Employees so ordered must be in an authorized leave status from their regular military office employment during the period served on active duty.

Sec. 53. NRS 412.088 is hereby amended to read as follows:

412.088 1. The Office ~~+~~ *may* adopt and provide suitable medals, prizes or other awards for the promotion of rifle practice by duly organized rifle clubs of the Nevada ~~+~~ *Firearms Coalition* and organizations and members of the Nevada National Guard ~~+~~ *when funds are available and appropriated by the State or the Federal Government.*

2. The Adjutant General shall encourage and promote rifle and pistol practice by Nevada clubs affiliated with the National Rifle Association of America, and select and appoint representatives from those clubs to attend the annual national rifle and pistol matches. Not more than \$1,000 of the amount appropriated for the support of the Adjutant General's office may be used annually in the purchase of ammunition to be used by such rifle clubs, which ammunition must be sold at cost plus transportation charges.

Sec. 54. NRS 412.116 is hereby amended to read as follows:

412.116 1. The forces of the Nevada National Guard must be organized, armed, disciplined, governed, administered and trained as prescribed by applicable federal laws and regulations and Office regulations.

2. It hereby is declared to be the policy of the State that there must be an equality of treatment and opportunity for all persons in the Nevada National Guard without regard to race, creed, color, ~~+~~ *gender, sexual orientation* or national origin.

3. *As used in this section, "sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.*

Sec. 55. NRS 412.126 is hereby amended to read as follows:

412.126 1. The Governor is authorized to issue licenses to bodies of persons to organize, drill and bear arms as *volunteer* military companies or *volunteer military* organizations.

2. Whenever any such body of persons associate themselves as a *volunteer* military company or *volunteer military* organization



and drill with arms under the license of the Governor, the *volunteer* military company or *volunteer military* organization:

(a) Shall file with the Adjutant General annually, or at such time as the Governor or Adjutant General may designate, a muster roll of such *volunteer* military company or *volunteer military* organization certified by the oath of the commanding officer thereof. The muster roll shall contain the names, ages, occupations and places of residence of all members thereof, and the number and character of all arms in the possession of such organization.

(b) Is subject to inspection by the Adjutant General upon his or her request within such time as the Adjutant General shall designate.

3. Each member of such *volunteer* military company or *volunteer military* organization shall take and subscribe to an oath before a person authorized to administer it that he or she will support the Constitution of the United States and the Constitution of the State of Nevada and will obey and maintain all laws and obey all officers employed in administering those Constitutions and laws.

Sec. 56. NRS 412.128 is hereby amended to read as follows:

412.128 1. Whenever the Governor deems it necessary in time of peace, the Governor may call all or any part of the *reservists of the* Nevada National Guard ~~{Reserve}~~ or volunteer *military* organizations licensed by the Governor into active service to be organized pursuant to Office regulations to augment the Nevada National Guard as an internal security force.

2. In time of war, the Governor may call all or any part of the *reservists of the* Nevada National Guard ~~{Reserve}~~ or volunteer *military* organizations licensed by the Governor into active service to be organized pursuant to Office regulations to replace the Nevada National Guard as a state force when the Nevada National Guard is ordered into federal service.

3. Whenever laws of the United States authorize the organization of such state forces under federal recognition, the Governor or Adjutant General may promulgate such Office regulations as are necessary to comply with such federal laws and obtain federal recognition for the force authorized by this section.

Sec. 57. NRS 412.138 is hereby amended to read as follows:

412.138 When members of the Nevada National Guard are called into state active duty by the Governor to fight a fire, combat a flood or any other emergency where members of the Nevada National Guard are performing as a labor force rather than a military force, they shall receive pay and allowances ~~{equal to that received by the main labor force in the service of the State or Federal~~



~~Government.~~ *according to their respective military grade and pay status.*

Sec. 58. NRS 412.188 is hereby amended to read as follows:

412.188 1. The qualifications for enlistment and reenlistment, the periods of enlistment, reenlistment and voluntary extension of enlistment, the period of service, the form of oath to be taken and the manner and form of transfer and discharge of enlisted personnel of the Nevada National Guard must be those prescribed by applicable federal laws and regulations and Office regulations.

2. The Governor is authorized to extend the period of any enlistment, reenlistment, voluntary extension of enlistment or the period of service of enlisted personnel ~~to~~ *serving as reservists of* the Nevada National Guard ~~Reserve~~ or volunteer *military* organizations licensed by the Governor for a period not to exceed 6 months after the termination of an emergency declared by the Governor, the Legislature, the President or Congress.

3. Whenever the period of enlistment, reenlistment, voluntary extension of enlistment, and the period of service of enlisted personnel of the reserve components of the Armed Forces of the United States are extended, the Governor shall extend the period of any enlistment, reenlistment, voluntary extension of enlistment or the period of service of enlisted personnel in the corresponding ~~force~~ *component* of the Nevada National Guard for the same period.

Sec. 59. NRS 412.196 is hereby amended to read as follows:

412.196 NRS 412.196 to 412.584, inclusive, *and sections 2 to 43, inclusive, of this act* may be cited as the Nevada Code of Military Justice.

Sec. 60. NRS 412.198 is hereby amended to read as follows:

412.198 As used in the Nevada Code of Military Justice , *unless the context otherwise requires,* the words and terms defined in NRS 412.202 to 412.252, inclusive, *and sections 2 to 6, inclusive, of this act* ~~shall, unless the context otherwise requires,~~ have the meaning ascribed to them in ~~such~~ *those* sections.

Sec. 61. NRS 412.214 is hereby amended to read as follows:

412.214 "Commanding officer" ~~includes only~~ *means a* commissioned ~~officers~~ *officer who by virtue of rank and assignment exercises primary command authority over a military organization or a prescribed territorial area, which under pertinent official directives is recognized as a command.*



Sec. 62. NRS 412.216 is hereby amended to read as follows:
412.216 "Commissioned officer" includes ~~††~~ *an officer* commissioned *in the Armed Forces of the United States and all* warrant ~~†officer.†~~ *officers of the same.*

Sec. 63. NRS 412.239 is hereby amended to read as follows:
412.239 "Military judge" means an official of a general or special court-martial. ~~†, who is a commissioned officer and who is licensed to practice law in the State of Nevada.†~~

Sec. 64. NRS 412.242 is hereby amended to read as follows:
412.242 "Nevada National Guard" includes the National Guard of the State, as defined in 32 U.S.C. § 101(3), the *reservists to the* Nevada National Guard ~~†Reserve†~~ and volunteer *military* organizations licensed by the Governor when called into active service by the Governor.

Sec. 65. NRS 412.254 is hereby amended to read as follows:
412.254 *1.* The following persons who are not in federal service are subject to this Code:

~~††~~ *(a)* Members of the Nevada National Guard, whether or not they are in training pursuant to 32 U.S.C. §§ 501 to 507, inclusive.

~~††~~ *(b)* *Retired, separated or discharged members of the Nevada National Guard, regardless of their entitlement to pay, if the offense charged occurred before their retirement, separation or discharge.*

(c) All other persons lawfully ordered to duty in or with the Nevada National Guard, from the dates they are required by the terms of the order or other directive to obey it.

2. No person may be punished under this Code for any offense provided for in the Code unless:

(a) The person is subject to any provision of subsection 1 or is a member of the state military forces; and

(b) The offense is either a purely military offense or a civilian offense where there is a nexus between the offense and the state military forces.

3. To impose disciplinary action under the Code, there must be jurisdiction over the person pursuant to section 8 of this act and jurisdiction over the subject matter pursuant to NRS 412.256.

4. For jurisdictional issues based on assignment or attachment, each service component shall refer to the current rules and other guidance applicable to the service component, including, without limitation, regulations and policy directives. Before the initiation of any action pursuant to this Code, the judge advocate shall require that the commanding officer resolve any



jurisdictional issue regarding assigned or attached personnel involved in the action.

Sec. 66. NRS 412.256 is hereby amended to read as follows:

412.256 The following provisions apply with regard to jurisdiction under this Code:

1. An offense of a purely military nature contained in the Code may be the subject of administrative measures, nonjudicial punishment or courts-martial. Each military offense is derived from the Uniform Code of Military Justice, 10 U.S.C. §§ 801 et seq. and, to the extent not inconsistent with the Code provisions describing those offenses, this Code incorporates each element of the offense as described in the Uniform Code with the following clarifications:

(a) Insofar as an element of an offense described in the Uniform Code refers to the United States, the element also refers to this State.

(b) Insofar as an element of an offense described in the Uniform Code refers to persons in the service of the United States or officials thereof, the element also includes persons in the service of the state military forces or state officials as provided in the Code.

(c) Insofar as an element refers to the property of the United States, the element also includes property of this State.

2. Offenses of a nonmilitary nature may be the subject of administrative measures, nonjudicial punishment or court-martial provided that the person alleged to have committed the offense is subject to the Code and there is a nexus between the act or omission constituting the offense and the state military forces. Civilian criminal offenses may be subject to prosecution pursuant to 10 U.S.C. §§ 933 and 934 if that nexus is present.

3. A proper civilian court has primary jurisdiction when an act or omission violates both the Code and state or federal criminal law. In such cases, a state court-martial or nonjudicial proceeding for punishment may be initiated only after the civilian authority has declined to prosecute or has dismissed charges, provided jeopardy has not attached. However, nothing in this Code precludes a commanding officer from taking administrative action even if the civilian authority exercises jurisdiction. Administrative remedies are not considered double jeopardy.

4. Any member of the state military forces may be ordered to duty involuntarily for any purpose under the Code.

5. In conducting prosecutions, a judge advocate shall coordinate with the Attorney General of the State of Nevada,



similar officials in the State or county or equivalent prosecutorial authorities and appropriate municipal prosecutorial authorities to ensure that the judge advocate prosecutes with the cooperation of those local and state prosecutors. A commanding officer shall refer all suspected civilian offenses to a judge advocate who shall coordinate with the proper authorities when appropriate.

6. Each person discharged from the Nevada National Guard who is later charged with having fraudulently obtained the discharge is, subject to NRS 412.376, subject to trial by court-martial on that charge and is after apprehension subject to this Code while in the custody of the military for that trial. Upon conviction of that charge the person is subject to trial by court-martial for all offenses under this Code committed before the fraudulent discharge.

~~12-1~~ 7. No person who has deserted from the Nevada National Guard may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

Sec. 67. NRS 412.286 is hereby amended to read as follows:

412.286 1. Under Office regulations, limitations may be placed on the powers granted by NRS 412.286 to 412.302, inclusive, *and sections 10 to 17, inclusive, of this act* with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of NRS 412.286 to 412.302, inclusive, *and sections 10 to 17, inclusive, of this act* to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, punishment may not be imposed upon any member of the Nevada National Guard under NRS 412.286 to 412.302, inclusive, *and sections 10 to 17, inclusive, of this act* if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under Office regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by Office regulations, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate his or her powers under NRS 412.286 to 412.302, inclusive, *and sections 10 to 17, inclusive, of this act* to a principal assistant.

2. *When nonjudicial punishment has been imposed for an offense, nonjudicial punishment may not again be imposed for the same offense. Administrative action can be taken for the same offense and will not be considered double punishment under the*



Code. For the purposes of this subsection, "same offense" means an offense that was part of a single incident or course of conduct.

3. After nonjudicial punishment has been imposed, it may not be increased, upon appeal or otherwise, unless the punishment imposed was not provided for in the Code.

4. When a commanding officer determines that nonjudicial punishment is appropriate for a particular serviceman or servicewoman, all known offenses determined to be appropriate for disposition by nonjudicial punishment and ready to be considered at that time, including, without limitation, all such offenses arising from a single incident or course of conduct, must ordinarily be considered together, rather than being made the basis for multiple punishment.

5. Nonjudicial punishment may not be imposed for any offense which was committed more than 3 years before the date of imposition of punishment, unless such 3-year limitation is waived by the accused in writing or unless the accused has filed an appeal under this Code.

6. Nothing in subsection 2 or 4 precludes a commanding officer from imposing, at one time, more than one punishment nonjudicially for the offense or offenses arising from a single incident or course of conduct authorized in the Code.

Sec. 68. NRS 412.288 is hereby amended to read as follows:

412.288 Subject to NRS 412.286, ~~[any]~~ **a** commanding officer may ~~[- in addition to or in lieu of admonition or reprimand,]~~ impose one or more of the following **authorized maximum** disciplinary punishments **listed in this section** for minor offenses , without the intervention of a court-martial:

~~1. Upon officers of his or her command:~~

~~—(a) Restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;~~

~~—(b) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:~~

~~——(1) Arrest in quarters for not more than 30 consecutive days;~~

~~——(2) Forfeiture of not more than one-half of 1 month's pay per month for 2 months;~~

~~——(3) Restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days; or~~

~~——(4) Detention of not more than one-half of 1 month's pay per month for 3 months;~~

~~2. Upon other personnel of his or her command:~~

~~—(a) Correctional custody for not more than 7 consecutive days;~~

~~—(b) Forfeiture of not more than 7 days' pay;~~



~~—(c) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction.~~

~~—(d) Extra duties, including fatigue or other duties, for not more than 14 consecutive days.~~

~~—(e) Restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days.~~

~~—(f) Detention of not more than 14 days' pay.~~

~~—(g) If imposed by an officer of the grade of major or above:~~

~~—(1) Correctional custody for not more than 30 consecutive days;~~

~~—(2) Forfeiture of not more than one half of 1 month's pay per month for 2 months;~~

~~—(3) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;~~

~~—(4) Extra duties, including fatigue or other duties, for not more than 45 consecutive days;~~

~~—(5) Restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days; or~~

~~—(6) Detention of not more than one half of 1 month's pay per month for 3 months.~~

~~→ Detention of pay shall be for a stated period of not more than 1 year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.]~~

1. The maximum punishments a company grade officer may impose upon enlisted members of the officer's command for each offense are:



(a) For traditional guard members of the Nevada National Guard:

(1) Suspension from duty for not more than two drill periods which need not be consecutive;

(2) Forfeiture of pay for not more than two drill periods which need not be consecutive;

(3) Reduction to the next inferior pay grade if the grade from which the serviceman or servicewoman is demoted is within the authority to promote of the officer imposing the reduction;

(4) Withholding of privileges for not more than 6 consecutive months;

(5) Reprimand; and

(6) Admonition.

(b) For active guard reserve members of the Nevada National Guard:

(1) Suspension from duty for not more than 14 days which need not be consecutive;

(2) Forfeiture of pay for not more than 14 days which need not be consecutive;

(3) Reduction to the next inferior pay grade if the grade from which the serviceman or servicewoman is demoted is within the authority to promote of the officer imposing the reduction;

(4) Withholding of privileges for not more than 6 consecutive months;

(5) Reprimand; and

(6) Admonition.

2. The maximum punishments a commanding officer of the grade of major or above may impose upon enlisted members of the officer's command are:

(a) Any punishment authorized in subsection 1.

(b) For traditional guard members of the Nevada National Guard:

(1) Suspension from duty for not more than four drill periods which need not be consecutive;

(2) Forfeiture of pay for not more than four drill periods which need not be consecutive; and

(3) Reduction to the next inferior pay grade if the grade from which the serviceman or servicewoman is demoted is within the authority to promote of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades.



(c) For active guard reserve members of the Nevada National Guard:

(1) Suspension from duty for not more than 1 month, the days of which need not be consecutive;

(2) Forfeiture of pay for not more than 1 month, the days of which need not be consecutive; and

(3) Reduction to the next inferior pay grade if the grade from which the serviceman or servicewoman is demoted is within the authority to promote of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades.

3. The maximum punishments which a commanding officer may impose upon officers under the commanding officer's command are:

(a) Any punishment otherwise authorized pursuant to this section and, if the commanding officer is a major or above, any punishment authorized in subsection 2.

(b) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:

(1) For traditional guard members of the Nevada National Guard:

(I) Suspension from duty for not more than eight drill periods which need not be consecutive; and

(II) Forfeiture of pay for not more than one-half of one drill period's pay for eight drill periods which need not be consecutive.

(2) For active guard reserve members of the Nevada National Guard:

(I) Suspension from duty for not more than 2 months, the days of which need not be consecutive; and

(II) Forfeiture of pay for not more than one-half of 1 month's pay for 2 months, the days of which need not be consecutive.

4. The Governor, the Adjutant General, an officer exercising general court-martial authority or an officer of a general or flag rank may impose any punishment authorized in subsection 1, 2 or 3 upon any officer or enlisted member of the officer's command.

Sec. 69. NRS 412.294 is hereby amended to read as follows:

412.294 **1.** The officer who imposes the punishment authorized in NRS 412.288, or the officer's successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a



reduction in grade or a forfeiture imposed under NRS 412.288, whether or not executed.

2. In addition, he or she may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges and property affected.

3. He or she may also mitigate reduction in grade to forfeiture or detention of pay. ~~{When mitigating:~~

~~—1. Arrest in quarters to restriction;~~

~~—2. Correctional custody to extra duties or restriction, or both; or~~

~~—3. Extra duties to restriction;~~

~~→ the mitigated punishment shall not be for a greater period than the punishment mitigated.}~~

4. When mitigating forfeiture of pay to detention of pay, the amount of the detention ~~{shall}~~ **must** not be greater than the amount of the forfeiture.

5. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under NRS 412.286 to 412.302, inclusive, **and sections 10 to 17, inclusive, of this act** by the officer who imposed the punishment mitigated.

Sec. 70. NRS 412.296 is hereby amended to read as follows:

412.296 1. A person punished under NRS 412.286 to 412.302, inclusive, **and sections 10 to 17, inclusive, of this act** who considers his or her punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under NRS 412.294 by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

~~{1. Arrest in quarters for more than 7 days;~~

~~—2. Correctional custody for more than 7 days;~~

~~—3. Forfeiture of more than 7 days' pay;~~

~~—4. Reduction of one or more pay grades from the fourth or a higher pay grade;~~

~~—5. Extra duties for more than 14 days;~~

~~—6. Restriction for more than 14 days; or~~

~~—7. Detention of more than 14 days' pay.}~~

(a) Suspension or forfeiture of pay for more than two drill periods or 14 days; or

(b) Reduction of one or more pay grades,



↳ the authority who is to act on the appeal shall refer the case to the State Judge Advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under NRS 412.288.

2. Appeals of nonjudicial punishment must be made to the next superior authority. The next superior authority is typically the commanding officer superior to the commanding officer who imposed the punishment. When a principal assistant imposes nonjudicial punishment, the next superior authority is the commanding officer superior to the commanding officer who delegated the power to the principal assistant to impose punishment.

3. Only one appeal is allowed pursuant to this section.

4. The accused must be given a reasonable time within which to submit an appeal. A reasonable time is 30 days after imposition of the nonjudicial punishment or the time before the next monthly drill following imposition of the punishment, whichever comes later.

5. A superior authority to the commanding officer who imposed the nonjudicial punishment, typically the next superior commanding officer, may act on an appeal.

6. Appeals must be in writing on applicable forms provided by the Office of the State Judge Advocate and must set forth the reasons for appeal and include additional documentation and evidence supporting the appeal. The superior authority may not consider additional evidence which was not presented to the commanding officer who imposed the nonjudicial punishment unless the exclusion of such evidence would yield an unjust result.

7. Before acting on an appeal, the superior authority shall refer the case to a judge advocate for consideration and advice. The judge advocate shall render an opinion as to the appropriateness of the punishment and whether the proceedings were conducted in accordance with law and regulations. When a case is so referred, the judge advocate is not limited to an examination of any written matter comprising the record of proceedings, and may make any inquiries and examine any additional matter deemed necessary.

8. In acting on an appeal, the superior authority may exercise the same power with respect to punishment imposed as may be exercised by the officer who imposed the nonjudicial punishment. The superior authority shall consider the record of proceedings, any matters submitted by the serviceman or servicewoman, any matters considered during legal review and any other appropriate



matters. If the superior authority sets aside nonjudicial punishment due to procedural error, such superior authority may authorize additional proceedings by the imposing commanding officer or a successor, but the punishment shall be not more severe than that originally imposed. Upon completion of action by the superior authority, the accused must be promptly notified of the results.

Sec. 71. NRS 412.298 is hereby amended to read as follows:

412.298 The imposition and enforcement of disciplinary punishment ~~under~~ *pursuant to* NRS 412.286 to 412.302, inclusive, *and sections 10 to 17, inclusive, of this act*, for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable ~~under~~ *pursuant to* NRS 412.286 to 412.302, inclusive ~~+~~, *and sections 10 to 17, inclusive, of this act*, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

Sec. 72. NRS 412.304 is hereby amended to read as follows:

412.304 1. In the Nevada National Guard not in federal service, there are general, special and summary courts-martial constituted like similar courts of the Army and Air Force. They have the jurisdiction and powers, except as to punishments, and ~~shall~~ *must* follow the forms and procedures provided for those courts.

2. ~~Courts-martial shall be constituted as follows:~~ *The three types of courts-martial for the state military forces include:*

(a) General courts-martial, consisting of:

(1) A military judge and not less than five members; or
(2) ~~A~~ *Only a* military judge ~~alone,~~ if, before the court is assembled, the accused, knowing the identity of the military judge ~~+~~ and after consultation with defense counsel, requests *orally on the record or* in writing ~~+~~ a court composed ~~only~~ of *only* a military judge, ~~provided~~ *and* the military judge approves ~~A court composed only of a military judge is not available to one accused of an offense punishable by death, except when the case has been referred to a trial as a nonecapital case.~~ *the request.*

(b) Special courts-martial, consisting of:

(1) A military judge and not less than three members; or
(2) ~~A~~ *Only a* military judge ~~alone,~~ if *one has been detailed to the court and* the accused, under the same conditions as those prescribed in subparagraph (2) of paragraph (a) of this



subsection, so requests ~~it~~ *and the military judge approves the request.*

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

Sec. 73. NRS 412.308 is hereby amended to read as follows:

412.308 Subject to NRS 412.306, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the Governor may prescribe, adjudge any ~~of the following punishments:~~

- ~~1. A fine of not more than \$200 or forfeiture of pay and allowances of not more than \$200;~~
- ~~2. Confinement with hard labor for not more than 200 days;~~
- ~~3. Dishonorable discharge, bad conduct discharge or dismissal;~~
- ~~4. Reprimand;~~
- ~~5. Reduction of enlisted persons to a lower grade; or~~
- ~~6. Any combination of these punishments.]~~ *punishment allowed by the Code.*

Sec. 74. NRS 412.312 is hereby amended to read as follows:

412.312 Subject to NRS 412.306, special courts-martial have jurisdiction to try persons subject to this Code for any offense for which they may be punished under this Code ~~[A special court-martial may adjudge any punishment a general court-martial may adjudge, except dishonorable discharge, dismissal or confinement with hard labor for more than 100 days, forfeiture of pay and allowances of more than \$100 or a fine of more than \$100.]~~ *and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this Code except for dishonorable discharge, dismissal, confinement for more than 1 year, forfeiture of pay exceeding one-half pay per month or forfeiture of pay for more than 1 year.*

Sec. 75. NRS 412.314 is hereby amended to read as follows:

412.314 1. Subject to NRS 412.306, summary courts-martial have jurisdiction to try persons subject to this Code, except officers ~~and warrant officers,]~~ *, cadets, candidates and midshipmen,* for any offense made punishable by this Code ~~[under such limitations as the Governor may prescribe.~~

2. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if the person objects thereto. ~~[unless under NRS 412.286, he or she has been permitted and has elected to refuse punishment under NRS 412.286 to 412.302, inclusive.]~~ If objection to trial by summary court-martial is made by an accused ~~[who has not been~~



~~permitted to refuse punishment under NRS 412.286 to 412.302, inclusive, trial shall be ordered by special or general court-martial, as may be appropriate.~~

~~3. Summary courts-martial may adjudge any of the following punishments:~~

~~(a) Confinement with hard labor for not exceeding 25 days;~~
~~(b) A fine of not more than \$25 or forfeiture of pay and allowances of not more than \$25 for a single offense;~~

~~(c) Reduction of enlisted persons to a lower grade; and~~

~~(d) Any combination of these punishments.], trial by special or general court-martial may be ordered, as may be appropriate. Summary courts-martial may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this Code except dismissal, dishonorable or bad-conduct discharge, confinement for more than 1 month, restriction to specified limits for more than 2 months or forfeiture of more than one-half of 1 month's pay.~~

Sec. 76. NRS 412.324 is hereby amended to read as follows:

412.324 **1.** In the Nevada National Guard not in federal service, **a general [courts-martial] court-martial** may be convened by the **: [President or by the]**

(a) Governor [;];

(b) Adjutant General;

(c) Commanding officer of a component of the state military forces;

(d) Commanding officer of a division or a separate brigade; or

(e) Commanding officer of a separate wing.

2. If any such commanding officer is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

Sec. 77. NRS 412.326 is hereby amended to read as follows:

412.326 **1.** In the Nevada National Guard not in federal service, **[the] a special court-martial may be convened by:**

(a) Any person who may convene a general court-martial;

(b) The commanding officer of a garrison, fort, post, camp, [airbase, auxiliary airbase or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.] Nevada Air National Guard base or naval base or station;



(c) The commanding officer of a brigade, regiment, detached battalion or corresponding unit of the Nevada Army National Guard;

(d) The commanding officer of a wing, group, separate squadron or corresponding unit of the Nevada Air National Guard; or

(e) The commanding officer or officer in charge of any other command when empowered by the Adjutant General.

2. When any such officer is an accuser, the court must be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

Sec. 78. NRS 412.328 is hereby amended to read as follows:

412.328 1. In the Nevada National Guard not in federal service, ~~the commanding officer of a garrison, fort, post, camp, airbase, auxiliary airbase or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.~~ *a summary court-martial may be convened by:*

(a) Any person who may convene a general court-martial;

(b) The commanding officer of a detached company or other detachment or corresponding unit of the Nevada Army National Guard;

(c) The commanding officer of a detached squadron or other detachment or the corresponding unit of the Nevada Air National Guard; or

(d) The commanding officer or officer in charge of any other command when empowered by the Adjutant General.

2. When only one commissioned officer is present with a command or detachment he or she shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by ~~him or her.~~ *such authority.*

Sec. 79. NRS 412.332 is hereby amended to read as follows:

412.332 1. Any commissioned officer of or on duty with the Nevada National Guard is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.



2. Any warrant officer of or on duty with the Nevada National Guard is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

3. Any enlisted member of the Nevada National Guard who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but he or she shall serve as a member of a court only if, before the ~~convening of the court,~~ *conclusion of a session called by the military judge before trial or, in the absence of such a session, before the court is assembled for the trial of the accused,* the accused personally has requested *orally on the record or* in writing that enlisted members serve on it. After such a request, the accused *serviceman or servicewoman* may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained. As used in this subsection, the word “unit” means any regularly organized body of the Nevada National Guard not larger than a company, a squadron or a corresponding body.

4. When it can be avoided, no person subject to this Code shall be tried by a court-martial any member of which is junior to him or her in rank or grade.

5. When convening a court-martial, the convening authority shall detail as members thereof such members of the Nevada National Guard as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the Nevada National Guard is eligible to serve as a member of a general or special court-martial when he or she is the accuser, ~~for~~ a witness, ~~for the prosecution~~ or has acted as investigating officer or as counsel in the same case.

6. Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate the authority under this subsection to a judge advocate or to any other principal assistant.



7. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the State and of appropriate rank, the convening authority shall appoint him or her as president of a special court-martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction.

Sec. 80. NRS 412.334 is hereby amended to read as follows:

412.334 1. *A military judge must be detailed to each general and special court-martial. The military judge shall preside over each open session of the court-martial to which the military judge has been detailed.*

2. The authority convening a general or special court-martial shall request the State Judge Advocate to detail a military judge. *Neither the convening authority nor any staff member of the convening authority may prepare or review any report concerning the effectiveness, fitness or efficiency of the military judge who is detailed if the report relates to the military judge's performance of duty as a military judge.*

~~12-1~~ 3. No person may act as military judge in a case wherein the person is the accuser, a witness, ~~for the prosecution,~~ counsel or has acted as investigating officer.

~~13-1~~ 4. The military judge may not consult with the members of the court except in the presence of the accused and trial and defense counsel, nor may he or she vote with the members of the court.

Sec. 81. NRS 412.336 is hereby amended to read as follows:

412.336 1. For each general and special court-martial the authority convening the court shall request the State Judge Advocate to detail trial and defense counsel and such assistants as he or she considers appropriate.

2. No person who has acted as investigating officer, military judge or court member may thereafter act as trial counsel or assistant trial counsel in the same case.

3. Unless requested by the accused, no person who has acted as investigating officer, military judge or court member may thereafter act as defense counsel or assistant defense counsel in the same case.

4. No person who has acted for the prosecution may thereafter act for the defense in the same case; nor may any person who has acted for the defense act for the prosecution in the same case.

5. Counsel for general and special courts-martial shall be a member of the bar of the highest court of a state or of a federal court.



6. *Except as otherwise provided in subsection 7, trial counsel or defense counsel detailed for a general or special court-martial must be a judge advocate, and trial counsel must be a member in good standing of the State Bar of Nevada.*

7. *In the instance when defense counsel is not a member of the State Bar of Nevada, the defense counsel must be deemed admitted pro hac vice, subject to filing a certificate with the military judge setting forth the qualifications that counsel is:*

(a) *A commissioned officer of the Armed Forces of the United States or a component thereof;*

(b) *A member in good standing of the bar of the highest court of his or her state; and*

(c) *Certified as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy or the Marine Corps; or*

(d) *A judge advocate as defined in this Code.*

Sec. 82. NRS 412.342 is hereby amended to read as follows:

412.342 1. No member of a general or special court-martial may be absent or excused after ~~the accused has been arraigned except~~ *the court has been assembled for the trial of the accused unless:*

(a) *Excused as a result of a challenge;*

(b) *Excused by the military judge for physical disability ; or ~~as a result of a challenge or by~~*

(c) *By order of the convening authority for good cause.*

2. Whenever a general court-martial *, other than a general court-martial composed of a military judge only,* is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the military judge, the accused and counsel.

3. Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

4. *If the military judge of a court-martial composed of a military judge only is unable to proceed with trial because of*



physical disability, as a result of a challenge or for other good cause, the trial will proceed, subject to any applicable conditions of NRS 412.334, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused and counsel for both sides.

Sec. 83. NRS 412.348 is hereby amended to read as follows:

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

2. The accused shall be advised of the charges against him or her and of his or her right to be represented at that investigation by counsel. Upon his or her own request he or she shall be represented by civilian counsel if provided by him or her, or military counsel of his or her own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything he or she may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

3. If an investigation of the subject matter of an offense has been conducted before the accused is charged with an offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination and presentation prescribed in subsection 2, no further investigation of that charge is necessary under this section unless it is demanded by the accused after he or she is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

4. *If evidence adduced in an investigation under this section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that*



offense without the accused having first been charged with the offense if the accused is:

- (a) Present at the investigation;*
- (b) Informed of the nature of each uncharged offense investigated; and*
- (c) Afforded the opportunities for representation, cross-examination and presentation prescribed in subsection 2.*

5. The requirements of this section are binding on all persons administering this Code but failure to follow them does not divest a military court of jurisdiction.

Sec. 84. NRS 412.354 is hereby amended to read as follows:

412.354 1. Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the State Judge Advocate for consideration and advice. The convening authority may not refer a *specification under a* charge to a general court-martial for trial unless ~~the or she has found that the charge alleges an offense under this Code and is warranted by evidence indicated in the report of the investigation.~~ *the convening authority has been advised in writing by a judge advocate that:*

- (a) The specification alleges an offense under this Code;*
- (b) The specification is warranted by evidence indicated in the report of the investigation, if there is such a report; and*
- (c) A court-martial would have jurisdiction over the accused and the offense.*

2. If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

3. *The advice of the State Judge Advocate pursuant to subsection 1, with respect to a specification under a charge, must include a written and signed statement by the judge advocate:*

- (a) Expressing conclusions with respect to each matter set forth in subsection 1; and*
- (b) Recommending action that the convening authority take regarding the specification. If the specification is referred for trial, the recommendation of the judge advocate must accompany the specification.*

Sec. 85. NRS 412.358 is hereby amended to read as follows:

412.358 ~~The procedure.~~ *Pretrial, trial and posttrial procedures,* including modes of proof, ~~in cases before military courts and other military tribunals~~ *for cases before courts-martial arising under this Code and for courts of inquiry,* may be



prescribed by ~~Office regulations, which must, so far as practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State, but which may not be contrary to or inconsistent with this Code.~~ *the Governor or the Adjutant General by regulations, or as otherwise provided by law. The regulations prescribed under this section must apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the Armed Forces of the United States and must not be contrary to or inconsistent with this Code.*

Sec. 86. NRS 412.362 is hereby amended to read as follows:
412.362 ~~Not~~

1. Except as otherwise provided in subsection 2, no authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand or admonish the court or any member, law officer or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its, his or her functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving or reviewing authority with respect to his or her judicial acts.

2. Subsection 1 does not apply with respect to:

(a) General instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or

(b) To statements and instructions given in open court by the military judge, summary court-martial officer or counsel.

3. In the preparation of an effectiveness, fitness or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces or in determining whether a member of the state military forces should be retained on active status, no person subject to this Code may, in preparing any such report:

(a) Consider or evaluate the performance or duty of any such member as a member of a court-martial or witness therein; or



(b) Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

Sec. 87. NRS 412.364 is hereby amended to read as follows:

412.364 1. The trial counsel of a general or special court-martial shall prosecute in the name of the State and shall, under the direction of the court, prepare the record of the proceedings.

2. The accused has the right to be represented in his or her defense before a general or special court-martial ~~by~~ *or at an investigation as provided in NRS 412.348.*

3. *The accused may be represented:*

(a) In his or her defense before a general or special court-martial, by civilian counsel ~~if provided by him or her, or by~~ at the provision and expense of the accused;

(b) By military counsel selected by the accused if reasonably available ; ~~H~~ or ~~by~~

(c) By the defense counsel detailed under NRS 412.336.

4. Should the accused have counsel of his or her own selection, the defense counsel and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his or her associate counsel , ~~H~~ otherwise they shall be excused by the president of the court.

5. *Except as otherwise provided in subsection 6, if the accused is represented by military counsel of his or her own selection pursuant to paragraph (b) of subsection 3, any military counsel detailed in paragraph (c) of subsection 3 must be excused.*

6. *The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under NRS 412.336 to detail counsel, in that person's sole discretion:*

(a) May detail additional military counsel as assistant defense counsel; and

(b) If the accused is represented by military counsel of the accused's own selection pursuant to paragraph (b) of subsection 3, may approve a request from the accused that military counsel detailed in paragraph (c) of subsection 3 act as associate defense counsel.

7. *The senior force judge advocate of the same component of which the accused is a member shall determine whether the military counsel selected by an accused is reasonably available.*

~~3-~~ 8. In every court-martial proceeding the defense counsel may, in the event of conviction ~~forward~~ :



(a) *Forward* for attachment to the record of proceedings a brief of such matters as the defense counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate ~~†~~;

~~—4.†;~~

(b) *Assist the accused in the submission of any matter under NRS 412.452 to 412.562, inclusive, and sections 33 to 40, inclusive, of this act; and*

(c) *Take other action authorized by this Code.*

9. An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he or she is qualified to be a trial counsel as required by NRS 412.336, perform any duty imposed by law, regulation or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

~~†5.†~~ 10. An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he or she is qualified to be the defense counsel as required by NRS 412.336, perform any duty imposed by law, regulation or the custom of the service upon counsel for the accused.

Sec. 88. NRS 412.366 is hereby amended to read as follows:

412.366 1. At any time after the service of charges, which have been referred for trial to a court-martial composed of a military judge and members, the military judge may call the court into session without the presence of the members for:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) Holding the arraignment and receiving the pleas of the accused; or

(d) Performing any other procedural function which may be performed by the military judge which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, defense counsel and trial counsel and shall be made a part of the record.

2. *The proceedings described in subsection 1 must be conducted in the presence of the accused, defense counsel and trial counsel and must be made a part of the record. Such proceedings are not required to adhere to the provisions of NRS 412.342.*



3. Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. All other proceedings, including any other consultation of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

Sec. 89. NRS 412.372 is hereby amended to read as follows:

412.372 1. The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall be presented and decided before those by the accused are offered, unless justice dictates otherwise.

2. *If exercise of a challenge for cause reduces the court below the minimum number of members required by NRS 412.304, all parties shall, notwithstanding NRS 412.342, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges must not be exercised at that time.*

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

4. *If exercise of a peremptory challenge reduces the court below the minimum number of members required by NRS 412.304, the parties shall, notwithstanding NRS 412.342, either exercise or waive any remaining peremptory challenge not previously waived against the remaining members of the court before additional members are detailed to the court.*

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

Sec. 90. NRS 412.374 is hereby amended to read as follows:

412.374 1. The military judge, interpreters, and in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.



2. *The form of the oath or affirmation, the time and place of the taking thereof, the manner of recording the same and whether the oath or affirmation must be taken for all cases in which these duties are to be performed or for a particular case must be as prescribed in regulation or as provided by law. The regulations may provide that:*

(a) An oath or affirmation to perform faithfully the duties of a military judge, trial counsel or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty; and

(b) If such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

3. Each witness before a military court shall be examined on oath or affirmation.

Sec. 91. NRS 412.376 is hereby amended to read as follows:

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

2. Except as otherwise provided in this section, a person charged with desertion in time of peace or the offense punishable under NRS 412.554, is not liable to be tried by court-martial if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

3. Except as otherwise provided in this section ~~H~~ *or title 15 of NRS*, a person charged with any offense is not liable to be tried by court-martial or punished under NRS 412.286 to 412.302, inclusive, *and sections 10 to 17, inclusive, of this act* if the offense was committed more than ~~H~~ *3* years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under NRS 412.286 to 412.302, inclusive ~~H~~ *, and sections 10 to 17, inclusive, of this act.*

4. *Periods in which the accused is absent without authority or fleeing from justice are excluded in computing the period of limitation prescribed in this section.*

5. Periods in which the accused was absent from territory in which the State has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, ~~shall be~~ *are* excluded in computing the period of limitation prescribed in this section.



6. *When the United States is at war, the running of any statute of limitations applicable to any offense under this Code:*

(a) *Involving fraud or attempted fraud against the United States, any state or any agency of either in any manner, whether by conspiracy or not;*

(b) *Committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States or any state; or*

(c) *Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation or other termination or settlement of any contract, subcontract or purchase order which is connected with or related to the prosecution of war or with any disposition of termination inventory by any war contractor or government agency,*

↪ is suspended until 2 years after the termination of hostilities as proclaimed by the President of the United States or by a joint resolution of the Congress of the United States.

7. *If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations has expired or will expire within 180 days after the dismissal of the charges or specifications, trial and punishment under new charges and specification are not barred by the statute of limitations if the new charges and specifications:*

(a) *Are received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and*

(b) *Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications.*

Sec. 92. NRS 412.382 is hereby amended to read as follows:

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

2. *With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered*



immediately without vote. This finding constitutes the finding of the court unless the plea of guilty is withdrawn before the announcement of the sentence, in which event the proceedings must continue as though the accused had pleaded not guilty.

Sec. 93. NRS 412.388 is hereby amended to read as follows:

412.388 A military court may punish for contempt any person who uses any menacing word, sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100, or both. *A person not subject to this Code may be punished for contempt by a military court in the same otherwise applicable manner as that person could be punished if found in contempt of a criminal or civil court of the State.*

Sec. 94. NRS 412.396 is hereby amended to read as follows:

412.396 1. Voting by members of a general or special court-martial upon questions of challenge, on the findings and on the sentence ~~shall~~ *must* be by secret written ballot. The junior member of the court shall in each case count the votes. The count ~~shall~~ *must* be checked by the president, who shall forthwith announce the result of the ballot to the members of the court. *Unless a ruling is final, if any member objects thereto, the court must be cleared and closed and the question decided by a voice vote as provided in NRS 412.398, beginning with the junior in rank.*

2. *The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Except as otherwise provided in this subsection, any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused is final and constitutes the ruling of the court, including, without limitation, for the purposes of interlocutory appeal under NRS 412.418 to 412.438, inclusive, and sections 24 to 28, inclusive, of this act. During the trial, the military judge may change the ruling at any time.*

3. Before a vote is taken on the findings, and except where a court-martial is composed of a military judge alone, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(a) That the accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he or she must be acquitted;



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

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

~~§ 4.~~ 4. If the court-martial is composed of a military judge alone, he or she shall determine all questions of law and fact, and, if the accused is convicted, adjudge an appropriate sentence. The military judge shall make a general finding, unless requested to make a special finding of facts. If an opinion or memorandum decision is filed, it is sufficient if the findings of fact appear therein.

Sec. 95. NRS 412.398 is hereby amended to read as follows:

412.398 1. No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

2. All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

3. All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote ~~H~~, *but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by voice and by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for finding or sentence.* A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Sec. 96. NRS 412.404 is hereby amended to read as follows:

412.404 1. Each *general and special* court-martial ~~shall~~ *must* keep a separate record of the proceedings of the trial of each case brought before it and the record must be authenticated by the signatures of the president and the military judge. If the record cannot be authenticated by either the president or the military judge, by reason of his or her absence, it must be signed by a member in lieu of him or her. If both the president and the military judge are unavailable, the record must be authenticated by two members. ~~A record of the proceedings of a trial in which the sentence adjudged includes a bad conduct discharge or is more than that which could be adjudged by a special court martial must contain a complete verbatim account of the proceedings and testimony before the court. All other records of trial must contain such matter and be authenticated in such manner as the Governor may, by Office~~



~~regulation, prescribe.~~ *In a court-martial consisting of only a military judge, the court reporter shall authenticate the record under the same conditions which would impose such a duty on a member pursuant to this subsection.*

2. *A complete verbatim record of the proceedings and testimony must be prepared in each general and special court-martial case resulting in a conviction. In all other court-martial cases, the record must contain such matters as may be prescribed by regulations.*

3. *Each summary court-martial must keep a separate record of the proceedings in each case, and the record must be authenticated in the manner as may be prescribed by regulations.*

4. A copy of the record of the proceedings of each general and special court-martial must be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court-martial is not required by subsection ~~H~~ 2, the accused may buy such a record in accordance with Office regulations.

Sec. 97. NRS 412.408 is hereby amended to read as follows:

412.408 1. The punishments which a court-martial may direct for an offense may not exceed limits prescribed by this Code ~~H~~, *but a sentence may not exceed more than confinement for 10 years for a military offense nor can a sentence of death be adjudged. Any conviction by general court-martial of any military offense for which an accused can receive a sentence of confinement for more than 1 year is a felony. Except for convictions by a summary court-martial, all other military offenses are misdemeanors. Any conviction by a summary court-martial is not a criminal conviction.*

2. *The limits of punishment for violations of punitive articles prescribed herein must be the lesser of the sentences prescribed by the Manual for Courts-Martial of the United States that went into effect on January 1, 2004, and the most current edition of the State manual for courts-martial, if any, but no punishment may exceed that authorized by this Code.*

3. None of the provisions of this Code shall subject anyone to imprisonment for failure to pay a fine imposed by a military court.

Sec. 98. NRS 412.414 is hereby amended to read as follows:

412.414 1. A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the Nevada National Guard or in any jail, detention facility, penitentiary or



prison designated for that purpose. Persons so confined in a jail, detention facility, penitentiary or prison are subject to the same discipline and treatment as persons confined or committed to the jail, detention facility, penitentiary or prison by the courts of the State or of any political subdivision thereof.

2. ~~{The omission of the words “hard labor” from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.}~~ *No place of confinement may require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law.*

3. The keepers, officers and wardens of city or county jails and of other jails, detention facilities, penitentiaries or prisons designated by the Governor, or by such person as the Governor may authorize to act under NRS 412.276, shall:

(a) Receive persons ordered into confinement before trial and persons committed to confinement by a military court; and

(b) Confine them according to law.

➤ A keeper, officer or warden may not require payment of any fee or charge for so receiving or confining a person.

Sec. 99. NRS 412.416 is hereby amended to read as follows:

412.416 1. Unless otherwise provided in Office regulations, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes:

(a) A dishonorable or bad-conduct discharge; *or*

(b) Confinement, ~~}; or~~

~~—(c) Hard labor without confinement.}~~

➤ reduces that member to pay grade E-1, effective on the date of that approval.

2. If the sentence of a member who is reduced in pay grade under subsection 1 is set aside or disapproved, or, as finally approved, does not include punishment named in subsection 1, the rights and privileges of which the member was deprived because of that reduction must be restored to him or her and he or she is entitled to the pay and allowances to which he or she would have been entitled, for the period the reduction was in effect, had the member not been so reduced.

Sec. 100. NRS 412.418 is hereby amended to read as follows:

412.418 1. Except as *otherwise* provided in NRS 412.316 to 412.432, inclusive, *and sections 20 to 28, inclusive, of this act* a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him or her. The



convening authority shall approve the sentence or such part, amount or commuted form of the sentence as he or she sees fit, and may suspend the execution of the sentence as approved by him or her.

2. If the sentence of the court-martial includes dismissal, a dishonorable discharge or a bad-conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn, that part of the sentence extending to dismissal, a dishonorable discharge or a bad-conduct discharge must not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to the legality of the proceedings is final in such cases when review is completed by an appellate court prescribed in NRS 412.432, and is deemed final by the law of the state where judgment was had.

3. If the sentence of the court-martial includes dismissal, a dishonorable discharge or a bad-conduct discharge and if the right of the accused to appellate review is waived or an appeal is withdrawn, the dismissal, dishonorable discharge or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review is completed. The convening authority or other person acting on the case under the Code when so approved under this section may order any other part of a court-martial sentence executed immediately.

Sec. 101. NRS 412.422 is hereby amended to read as follows:

412.422 1. The findings and sentence of a court-martial must be reported promptly to the convening authority after the announcement of the sentence.

2. The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission must be in writing. Except in a summary court-martial case, such a submission must be made within 10 days after the accused has been given an authenticated record of trial under subsection 4 and, if applicable, the recommendation of a judge advocate. In a summary court-martial case, such a submission must be made within 7 days after the sentence is announced.

3. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under subsection 2 for not more than an additional 20 days.



4. *In a summary court-martial case, the accused must be promptly provided a copy of the record of trial for use in preparing a submission authorized by subsection 2.*

5. *The accused may waive the right to make a submission to the convening authority under subsection 2. Such a waiver must be made in writing and may not be revoked. For the purposes of subsection 7, the time within which the accused may make a submission pursuant to this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.*

6. *The convening authority has sole discretion to modify the findings and sentence of a court-martial pursuant to this section. If it is impractical for the convening authority to act, the convening authority shall forward the case to a person exercising general court-martial jurisdiction who may take action under this section.*

7. *Action on the sentence of a court-martial must be taken by the convening authority or by another person authorized to act under this section. The convening authority or other person authorized to take such action may do so only after consideration of any matters submitted by the accused pursuant to subsection 2 or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action may approve, disapprove, commute or suspend the sentence in whole or in part.*

8. *The convening authority or other person authorized to act on the sentence of a court-martial may, in the person's sole discretion:*

(a) Dismiss any charge or specifications by setting aside a finding of guilty;

(b) Change a finding of guilty on a charge or specification to a finding of guilty on an offense that is a lesser included offense of the offense stated in the charge or specification; or

(c) Refrain from taking any such action.

9. *Before acting under this section on any general or special court-martial case in which there is a finding of guilt, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of a judge advocate. The convening authority or other person taking action under this section shall refer the record of trial to the judge advocate, and the judge advocate shall use such record in the preparation of the recommendation. The recommendation of the judge advocate must include such matters as may be prescribed by*



regulation and must be served on the accused, who may submit any matter in response pursuant to subsection 2. By failing to object in the response to the recommendation or to any matter attached to the recommendation, the accused waives the right to object thereto.

10. The convening authority or other person taking action under this section, in the person's sole discretion, may order a proceeding in revision or a rehearing if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(a) Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(b) Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this Code; or

(c) Increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

11. The convening authority or other person taking action under this section may order a rehearing if that person disapproves the findings and sentences and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, that person shall dismiss the charges. The convening authority or other person taking action under this subsection may not order a rehearing as to the findings where there is a lack of sufficient evidence in the record to support the findings. The convening authority or other person taking action under this subsection may order a rehearing as to the sentence if that person disapproves the sentence.

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

~~12-1~~ *13. The convening authority shall refer the record of each general court-martial to the State Judge Advocate, who shall submit his or her written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion ~~shall~~ must be limited to questions of jurisdiction.*



Sec. 102. NRS 412.426 is hereby amended to read as follows:

412.426 1. If the convening authority disapproves the findings and sentence of a court-martial he or she may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case the convening authority shall state the reasons for disapproval. If the convening authority disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges.

2. Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he or she was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. *If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.*

Sec. 103. NRS 412.432 is hereby amended to read as follows:

412.432 1. *Except as otherwise required by this section, all records of trial and related documents must be transmitted and disposed of as prescribed by regulation and provided by law.*

2. If the convening authority is the Governor, his or her action on the review of any record of trial is final.

~~12~~ 3. In all other cases not covered by subsection ~~H~~ 2, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the entire record must be sent to the appropriate staff judge advocate or legal officer of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate or legal officer must then be sent to the State Judge Advocate for review.

~~13~~ 4. All other special and summary court-martial records must be sent to the law specialist or legal officer of the appropriate force of the Nevada National Guard and must be acted upon,



transmitted and disposed of as may be prescribed by Office regulations.

~~14-1~~ 5. The State Judge Advocate shall review the record of trial in each case sent to him or her for review as provided under subsection ~~13-1~~ 4. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate must be limited to questions of jurisdiction.

~~15-1~~ 6. The State Judge Advocate shall take final action in any case reviewable by him or her.

~~16-1~~ 7. In a case reviewable by the State Judge Advocate under this section, the State Judge Advocate may act only with respect to the findings and sentence as approved by the convening authority. The State Judge Advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he or she finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record he or she may weigh the evidence, judge the credibility of witnesses and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate sets aside the findings and sentence, he or she may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the State Judge Advocate sets aside the findings and sentence and does not order a rehearing, he or she shall order that the charges be dismissed.

~~17-1~~ 8. In a case reviewable by the State Judge Advocate under this section, he or she shall instruct the convening authority to act in accordance with his or her decision on the review. If the State Judge Advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, he or she may dismiss the charges.

~~18-1~~ 9. The State Judge Advocate may order one or more boards of review each composed of not less than three commissioned officers of the Nevada National Guard, each of whom must be a member of the State Bar of Nevada. Each board of review shall review the record of any trial by special court-martial, including a sentence to a bad-conduct discharge, referred to it by the State Judge Advocate. Boards of review have the same authority on review as the State Judge Advocate has under this section.

Sec. 104. NRS 412.452 is hereby amended to read as follows:

412.452 No person may be tried or punished for any offense provided for in NRS 412.454 to 412.558, inclusive, *and sections 33 to 40, inclusive, of this act* unless it was committed while the person was in a duty status.



Sec. 105. NRS 412.566 is hereby amended to read as follows:

412.566 **1.** NRS 412.254, 412.256, 412.266 to 412.302, inclusive, *and sections 9 to 17, inclusive, of this act*, 412.332, 412.336, 412.362, 412.406, 412.452 to 412.556, inclusive, ~~and~~ 412.566 ~~to~~, *412.568*, 412.572 ~~inclusive~~ *and section 8 of this act* must be carefully explained to every enlisted member ~~at the time~~:

(a) At the time of his or her enlistment or transfer or induction into ~~or at the time~~ *any of the state military forces or within 30 days thereafter*;

(b) At the time of his or her being ordered to duty in or with ~~or~~ any of the state military forces or within 30 days thereafter. ~~Those~~

2. The sections *set forth in subsection 1* must also be explained annually to each unit of the state military forces.

3. A complete text of this Code and Office regulations thereunder must be made available to any member of the militia, upon his or her request, for his or her personal examination.

Sec. 106. NRS 412.568 is hereby amended to read as follows:

412.568 Any member of the ~~militia~~ *state military forces* who believes himself or herself wronged by his or her commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the ~~Adjutant General's office~~ *officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. The officer exercising general court-martial jurisdiction shall examine the complaint and take proper measures for redressing the wrong complained of and shall, as soon as possible, send to the Adjutant General a true statement of that complaint, with the proceedings had thereon.*

Sec. 107. NRS 412.576 is hereby amended to read as follows:

412.576 **1.** For the purpose of collecting fines or penalties imposed by a court-martial, the president of any general or special court-martial and the summary court officer of any summary court-martial shall make a list of all fines and penalties and of the persons against whom they have been imposed, and may thereafter issue a warrant under his or her hand directed to any sheriff or constable of the county, commanding him or her to levy and collect such fines, together with the costs, upon and out of the property of the person against whom the fine or penalty was imposed.

2. Such warrant shall be executed and renewed in the same manner as executions from Justice Courts are executed and renewed.



3. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him or her, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine and shall be paid over by the officer receiving it in like manner as provided for other fines and moneys collected under a sentence of a summary court-martial.

4. All fines collected shall be paid by the officer collecting the same to the commanding officer of the organization of which the person fined is or was a member and accounted for by the commanding officer in the same manner as are other state funds.

5. Fines imposed by a military court or through imposition of nonjudicial punishment may be paid to the State and delivered to the court or imposing officer, or to a person executing their process. Fines may be collected in the following manner:

(a) By cash or money order;

(b) By retention of any pay or allowances due or to become due to the person fined from any state or the United States; or

(c) By garnishment or levy, together with costs, on the wages, goods and chattels of a person delinquent in paying a fine, as provided by law.

Sec. 108. NRS 412.578 is hereby amended to read as follows:

412.578 *1.* No action or proceeding may be prosecuted against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

2. All persons acting under the provisions of this Code, whether as a member of the military or as a civilian, are immune from any personal liability for any of the acts or omissions which they performed or failed to perform as part of their duties under this Code.

Sec. 109. NRS 412.604 is hereby amended to read as follows:

412.604 *1.* It is unlawful for any body of persons whatever, other than the Nevada National Guard and the troops of the United States, to associate themselves together as a *volunteer* military company or *volunteer military* organization to drill or parade with arms in any city or town of this state, without the license of the Governor, which license may at any time be revoked.

2. Students in educational institutions where military science is a part of the course of instruction may, with the consent of the



Governor, drill and parade with arms in public under the superintendence of their instructor.

3. Nothing contained in this section shall be construed so as to prevent members of benevolent or social organizations from wearing swords.

4. Any person violating any of the provisions of this section is guilty of a misdemeanor.

Sec. 110. NRS 412.184 and 412.292 are hereby repealed.

Sec. 111. This act becomes effective upon passage and approval.

