

## CHAPTER 5

### MAINE CODE OF MILITARY JUSTICE

#### §401. Title

This chapter may be cited as the "Maine Code of Military Justice." [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §402. Definitions

As used in this Code, unless the context indicates otherwise, the following terms have the following meanings. [PL 1983, c. 460, §3 (NEW).]

**1. Accuser.** "Accuser" means a person who:

A. Signs and swears to charges; [PL 1983, c. 460, §3 (NEW).]

B. Directs that charges be signed and sworn in the name of another; or [PL 1983, c. 460, §3 (NEW).]

C. Has an interest, other than an official interest, in the prosecution of the accused. [PL 1983, c. 460, §3 (NEW).]

[PL 1983, c. 460, §3 (NEW).]

**2. Active service.** Active service is defined in section 101-A, subsection 1.

[PL 1987, c. 230, §2 (RPR).]

**3. Code.** "Code" means this chapter.

[PL 1983, c. 460, §3 (NEW).]

**4. Commanding officer.** "Commanding officer" means any officer vested with the authority for the direction, coordination and control of a military unit.

[PL 2001, c. 662, §41 (AMD).]

**5. Enlisted person.** "Enlisted person" means any person who is serving in an enlisted grade in any military force.

[PL 1983, c. 460, §3 (NEW).]

**6. Military forces.** Military forces is defined in section 101-A, subsection 2.

[PL 1987, c. 230, §2 (RPR).]

**7. Military judge.** "Military judge" means an official of a court-martial detailed in accordance with section 221.

[PL 1983, c. 460, §3 (NEW).]

**8. Military unit.** "Military unit" means any military element whose structure is prescribed by a competent authority, such as a table of organization and equipment.

[PL 1983, c. 460, §3 (NEW).]

**9. Officer.** "Officer" means a commissioned or warrant officer.

[PL 1983, c. 460, §3 (NEW).]

**10. Superior officer.** "Superior officer" means an officer superior in rank or command.

[PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1987, c. 230, §2 (AMD). PL 2001, c. 662, §41 (AMD).

#### §403. Persons subject to the Code

**1. Active member.** All members of the state military forces are subject to the Maine Code of Military Justice at all times except when in federal service pursuant to United States Code, Title 10.

A. This code applies to members of the state military forces serving out-of-state and while going to and returning from service out-of-state to the same extent as a person serving within the State. [PL 1987, c. 263, §2 (NEW).]

B. Offenses committed outside the State may be tried and punished either inside or outside the State subject to section 418. [PL 1987, c. 263, §2 (NEW).]  
[PL 2001, c. 662, §42 (AMD).]

**2. Fraudulent discharge.** All persons discharged from the military forces subsequently charged with having fraudulently obtained the discharge are subject to trial by court-martial on that charge and after apprehension are subject to this Code while in the custody of the military forces for the trial. Upon conviction on that charge, they are subject to trial by court-martial for all offenses under this Code committed prior to the fraudulent discharge. [RR 2009, c. 2, §115 (COR).]

**3. Deserters.** Persons who have deserted from the military forces shall not be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any subsequent period of service. [PL 1983, c. 460, §3 (NEW).]

**4. Activation.** The Governor may order to active state service any member or former member of the state military forces for purposes of asserting jurisdiction in connection with prosecuting an offense alleged to have occurred while the person was in active state service. [PL 1983, c. 594, §19 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §19 (NEW). PL 1987, c. 263, §2 (AMD). PL 2001, c. 662, §42 (AMD). RR 2009, c. 2, §115 (COR).

#### §404. Places where applicable

This Code applies in all places where personnel of military forces are present. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §405. Judge advocates

The Adjutant General shall appoint judge advocates for the Army National Guard and judge advocates for the Air National Guard. The Adjutant General shall appoint as state judge advocate one of the judge advocates from the National Guard. [PL 2001, c. 662, §43 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §20 (AMD). PL 2001, c. 662, §43 (AMD).

#### §406. Apprehension

**1. Meaning.** Apprehension is the taking into custody of a person. [PL 1983, c. 460, §3 (NEW).]

**2. By military authority.** Any person authorized by law or regulations governing the military forces to apprehend persons subject to this Code or to trial thereunder may do so upon reasonable belief that an offense under this Code has been committed and that the persons apprehended committed it. [PL 1983, c. 460, §3 (NEW).]

**3. By civil authority.** Any civil officer having authority to apprehend offenders under the laws of this State may apprehend a deserter or a member of the military forces absent without leave and deliver the deserter or member into the custody of the appropriate component of the military force. Without limiting the authority granted in this subsection, upon written certification from the Adjutant General that a member is absent without leave from military duty, the civil officer, upon the Adjutant General's request, shall apprehend the member and deliver the member to duty in accordance with the request. [RR 2019, c. 1, Pt. B, §23 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §21 (AMD). RR 2019, c. 1, Pt. B, §23 (COR).

#### §407. Arrest or confinement

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Arrest" is the restraint of a person by an order directing the person to remain within certain specified limits and that is not imposed as a punishment for an offense. [RR 2019, c. 1, Pt. B, §24 (COR).]

B. "Confinement" is the physical restraint of a person. [PL 1983, c. 460, §3 (NEW).]  
[RR 2019, c. 1, Pt. B, §24 (COR).]

**2. Order.** A person subject to this Code who is charged with an offense under this Code may be ordered into arrest or confinement, as circumstances require.

A. An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this Code. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted persons of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement. [PL 2001, c. 662, §44 (AMD).]

B. An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority the officer or warrant officer is subject. The order may be oral or written and delivered in person or by another officer. The authority to order officers or warrant officers into arrest or confinement may not be delegated. [PL 2001, c. 662, §44 (AMD).]  
[PL 2001, c. 662, §44 (AMD).]

**3. Not a limitation.** Nothing in this section may be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until the proper authority may be notified.

[PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §44 (AMD). RR 2019, c. 1, Pt. B, §24 (COR).

#### §408. Designated jails

Confinement other than in a guard house, whether prior to, during or after trial by a military court, shall be executed in correctional centers designated by the Governor or by the Adjutant General for that purpose. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

**§409. Probable cause**

A person shall not be ordered into arrest or confinement except for probable cause. [PL 1983, c. 460, §3 (NEW).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

**§410. Information on charges; speedy trial**

When any person subject to this Code is arrested or confined prior to trial, immediate steps must be taken to inform the person of the specific wrong of which the person is accused and to try the person or to dismiss the charges and release the person. [RR 2019, c. 1, Pt. B, §25 (COR).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §25 (COR).

**§411. Quelling of disorders**

All officers and noncommissioned officers may quell all quarrels, frays and disorders among persons subject to this Code and apprehend persons subject to this Code who take part in those disorders. [PL 2001, c. 662, §45 (AMD).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §45 (AMD).

**§412. Receiving prisoners**

When an officer of the military forces delivers a prisoner and furnishes a statement of the offense charged against that prisoner to a provost marshal, commander of the guard, warden, keeper or officer of a city or county jail or other correctional center designated under section 408, that official shall commit the prisoner to the official's charge. [RR 2019, c. 1, Pt. B, §26 (COR).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §26 (COR).

**§413. Report of persons held**

Every provost marshal, commander of the guard, warden, keeper or officer of a city or county jail or other correctional center designated under section 408 to whose charge a prisoner is committed shall, within 24 hours after such commitment or as soon as the official is relieved from guard, report to the official's commanding officer the name of the prisoner, the offense charged against the prisoner and the name of the person who ordered or authorized commitment. [RR 2019, c. 1, Pt. B, §27 (COR).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §27 (COR).

**§414. Application of the United States Manual for Courts-Martial**

Insofar as it is not inconsistent with this Code, the United States Manual for Courts-Martial, as established by executive order of the President of the United States and as revised from time to time, applies to proceedings pursuant to this chapter. [PL 2001, c. 662, §46 (AMD).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §46 (AMD).

**§415. Nonjudicial punishment**

**(REPEALED)**

## SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §§22-25 (AMD). PL 2001, c. 662, §47 (RP).

**§415-A. Nonjudicial punishment**

**1. Disciplinary punishment.** A commander may, in addition to or in lieu of admonition, reprimand or extra training, impose disciplinary punishments for minor offenses without the intervention of a court-martial as follows.

A. A company grade officer commander or warrant officer commander may impose one or more of the following punishments:

- (1) Forfeiture of up to one day's pay;
- (2) Up to 4 hours of extra duties; or
- (3) Prohibition of promotion of up to one year. [PL 2001, c. 662, §48 (NEW).]

B. A field grade officer commander may impose one or more of the following punishments:

- (1) Forfeiture of up to 3 days' pay;
- (2) Up to 8 hours of extra duties; or
- (3) Prohibition of promotion of up to one year. [PL 2001, c. 662, §48 (NEW).]

C. An officer with the rank of colonel in the chain of command of an individual being considered for nonjudicial punishment may impose one or more of the following punishments:

- (1) Forfeiture of up to 5 days' pay;
- (2) Up to 16 hours of extra duties;
- (3) Prohibition of promotion of up to one year; or
- (4) Reduction of one grade for enlisted members. [PL 2013, c. 251, §5 (AMD).]

D. Only a general officer commander may impose punishments upon officers. [PL 2001, c. 662, §48 (NEW).]

E. An individual being considered for nonjudicial punishment has the right to consult counsel prior to receiving disciplinary punishment under this section. [PL 2001, c. 662, §48 (NEW).]

[PL 2013, c. 251, §5 (AMD).]

**2. Suspend; reduce.** The commander who imposes disciplinary punishment, or successor in command, may at any time suspend or reduce, or both, disciplinary punishment imposed. [PL 2001, c. 662, §48 (NEW).]

**3. Appeal.** A person punished under this section may appeal, through the proper channels, to the next higher commander. The appeal must be promptly forwarded and decided; in the meantime all disciplinary punishment is stayed. The commander to whom the appeal is referred may suspend or reduce, or both, the disciplinary punishment. Before ruling, the commander who is to act on the appeal may refer the case to a judge advocate for consideration. The commander to whom the appeal is referred shall submit the case to a judge advocate for review when the appeal is from a reduction in grade or forfeiture of 3 or more days of pay.

[PL 2001, c. 662, §48 (NEW).]

**4. Increase.** Once nonjudicial punishment has been imposed, it may not be increased upon appeal or otherwise for the same offense.

[PL 2001, c. 662, §48 (NEW).]

**5. Right to counsel.** A person that has disciplinary punishment imposed under this section has the right to assistance of military counsel in filing an appeal. There is no right to appeal the imposition of disciplinary punishment under this section to the civilian courts.  
[PL 2001, c. 662, §48 (NEW).]

**6. Serious crime.** The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or to a trial in the civilian courts of this State, another state or the United States for a serious crime or offense growing out of the same act or omission that is not properly punishable under this section. The fact that a disciplinary punishment has been enforced may be shown by the accused at trial and must be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.  
[PL 2001, c. 662, §48 (NEW).]

**7. Records.** The Governor may prescribe the form of records to be kept of proceedings under this section and may prescribe that the records must be in writing.  
[PL 2001, c. 662, §48 (NEW).]

**8. Enforcement.** A fine imposed pursuant to this section may be enforced as a money judgment in accordance with Title 14, chapter 502.  
[PL 2001, c. 662, §48 (NEW).]

**9. Pay.** For the purposes of this section, a "day's pay" means that pay a member is entitled to for one unit training assembly, also known as one drill period.  
[PL 2001, c. 662, §48 (NEW).]

#### SECTION HISTORY

PL 2001, c. 662, §48 (NEW). PL 2013, c. 251, §5 (AMD).

#### §416. Court-martial

A court-martial shall have jurisdiction to try persons subject to this Code for any offense defined and made punishable by this Code. [PL 1983, c. 460, §3 (NEW).]

A court-martial shall consist of: [PL 1983, c. 460, §3 (NEW).]

**1. With panel.** A military judge and a panel of not less than 3 members; or  
[PL 1983, c. 460, §3 (NEW).]

**2. Without panel.** A military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves the request.  
[PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §417. Sentences

Except as limited by rules prescribed by the Governor a court-martial may adjudge any one or a combination of the following punishments: [PL 1983, c. 460, §3 (NEW).]

**1. Confinement.** Confinement at hard labor for not more than 6 months;  
[PL 1983, c. 460, §3 (NEW).]

**2. Hard labor.** Hard labor without confinement for not more than 3 months;  
[PL 1983, c. 460, §3 (NEW).]

**3. Forfeiture or detention of pay.** Forfeiture or detention of pay not exceeding 2/3 of base pay entitlement per month for 6 months;  
[PL 1983, c. 460, §3 (NEW).]

**4. Dismissal.** Dismissal;  
[PL 1983, c. 460, §3 (NEW).]

**5. Bad conduct discharge.** Bad conduct discharge;  
[PL 1983, c. 460, §3 (NEW).]

**6. Dishonorable discharge.** Dishonorable discharge;  
[PL 1983, c. 460, §3 (NEW).]

**7. Reprimand.** Reprimand; or  
[PL 1983, c. 460, §3 (NEW).]

**8. Reduction to the lowest rank.** Reduction of noncommissioned officers to the lowest enlisted rank.  
[PL 2001, c. 662, §49 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §49 (AMD).

#### §418. Jurisdiction

The jurisdiction of a court-martial is limited to trial of persons subject to this Code who are accused of military offenses described in this Code. Persons subject to this Code who are accused of offenses cognizable by the civil courts of this State or any other state where the military forces are present may, upon accusation of a civil offense, be surrendered promptly to civil authorities for disposition if the mission of the military force will not be compromised. If the person subject to this Code is accused of both a military offense under this Code and a criminal offense by the civil authorities, that member may be prosecuted by either or both authorities and if found guilty, appropriately punished by either or both authorities. [PL 2001, c. 662, §50 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §26 (AMD). PL 2001, c. 662, §50 (AMD).

#### §419. Convening a court-martial

The convening authority of a court-martial under this Code shall be the Governor or the Adjutant General. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §420. Composition of court-martial

**1. Commissioned officer.** A commissioned officer is eligible to serve on any court-martial for the trial of a person who may lawfully be brought before the court for trial.  
[PL 1983, c. 460, §3 (NEW).]

**2. Warrant officer.** A warrant officer is eligible to serve on a court-martial for the trial of a person, other than a commissioned officer, who may lawfully be brought before the court for trial.  
[PL 1983, c. 460, §3 (NEW).]

**3. Enlisted member.** An enlisted member is eligible to serve on a court-martial for the trial of an enlisted member of an armed force who may lawfully be brought before the court for trial. An enlisted accused may not be tried by a court-martial that does not include in its membership enlisted members in a number comprising at least 1/3 of the total membership of the court.  
[PL 2001, c. 662, §51 (AMD).]

**4. Rank or grade.** Except where it cannot be avoided, a member of the military forces may not be tried by a court-martial any member of which is junior in rank or grade to the member being tried.

When convening a court-martial, the convening authority shall detail persons in the military forces who, in the convening authority's opinion, are qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament. No member of the military forces may serve as a member of a court-martial when the member is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

[RR 2019, c. 1, Pt. B, §28 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §51 (AMD). RR 2019, c. 1, Pt. B, §28 (COR).

#### §421. Military judge

**1. Appointment.** The authority convening a court-martial shall designate a military judge to preside over each case.

[PL 1983, c. 460, §3 (NEW).]

**2. Qualifications.** A military judge shall:

A. Possess the following military qualifications:

- (1) Be a commissioned officer of the state military forces;
- (2) Be a commissioned officer of the United States Armed Forces; or
- (3) Be a retired officer of the United States Armed Forces; and [PL 1983, c. 460, §3 (NEW).]

B. Possess the following other qualifications:

- (1) Be a member of the bar of the Supreme Judicial Court; and
- (2) Be certified as being qualified to serve as military judge by the state judge advocate. [PL 1983, c. 460, §3 (NEW).]

[PL 1983, c. 460, §3 (NEW).]

**3. Accuser or witness ineligible.** No person is eligible to act as military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigation officer or a counsel in the same case.

[RR 2019, c. 1, Pt. B, §29 (COR).]

**4. Duties.** A commissioned officer who is certified to be qualified for duty as a military judge of a court-martial may perform those duties only when the commissioned officer is assigned and directly responsible to the Adjutant General. The commissioned officer may perform duties of a judicial or nonjudicial nature other than those relating to the commissioned officer's duty as a military judge of a court-martial when those duties are assigned to the commissioned officer by or with the approval of the state judge advocate. The military judge of a court-martial may not consult with the members of the court, except in the presence of the accused, trial counsel and defense counsel, nor may the military judge vote with the members of the court.

[RR 2019, c. 1, Pt. B, §30 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §§29, 30 (COR).

#### §422. Counsel

**1. Appointment.** For each court-martial, the authority convening the court shall detail trial counsel and defense counsel, and such assistants as the authority considers appropriate. No person who has acted as investigating officer, military judge or court member in any case may act later as trial counsel, assistant trial counsel, or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the



same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

[RR 2019, c. 1, Pt. B, §31 (COR).]

**2. Qualifications.** Trial counsel or defense counsel detailed for a court-martial:

A. Shall be:

- (1) A graduate of an accredited law school; and
- (2) A member of:
  - (a) The bar of this State;
  - (b) The bar of a federal court; or
  - (c) The bar of the highest court of another state; and [PL 1983, c. 594, §27 (AMD).]

B. Shall be certified as competent to perform those duties by the state judge advocate. [PL 1983, c. 460, §3 (NEW).]

[PL 1983, c. 594, §27 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §27 (AMD). RR 2019, c. 1, Pt. B, §31 (COR).

#### §423. Court reporters

The convening authority of a court-martial, shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. If a court reporter is not available, the Governor or Adjutant General may authorize the use of audio tape or other electronic transcription equipment to record proceedings. The convening authority of a court-martial, may detail or employ interpreters who shall interpret for the court. The Governor shall adopt rules to implement this section. [PL 1983, c. 594, §28 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §28 (AMD).

#### §424. Members of court-martial

**1. Absence.** No member of a court-martial may be absent or excused after the court has been assembled for the trial of the accused, except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

[PL 1983, c. 460, §3 (NEW).]

**2. Vacancies.** Whenever a court-martial other than a court-martial composed of a single military judge is reduced below 3 members, the trial may not proceed until the convening authority details sufficient new members to provide at least 3 members. The trial may proceed with the new members present after the recorded evidence previously introduced to the court has been read to the court in the presence of the military judge, the accused and counsel for both sides.

[PL 1983, c. 460, §3 (NEW).]

**3. Military judge.** If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 425, 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.

[PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §425. Pretrial procedures

Except as provided otherwise by this Code, the pretrial and trial procedures before a court-martial must be in accordance with the procedures set forth in the United States Uniform Code of Military Justice, Title 10, United States Code, Chapter 47, for a special court-martial and the United States Manual for Courts-Martial as each is revised from time to time. [PL 2001, c. 662, §52 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §52 (AMD).

#### §426. Limitation of charges

A person may not be tried by court-martial or punished under section 415-A if the offense with which that person is charged was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction. [RR 2001, c. 2, Pt. A, §44 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2001, c. 2, §A44 (COR).

#### §427. Witnesses

**1. Oaths.** A military judge detailed under this Code may administer oaths. [PL 1983, c. 460, §3 (NEW).]

**2. Subpoena.** A military judge, notary public or clerk of any District Court or Superior Court may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the court-martial or to any matters involved in a trial by court-martial. [PL 1983, c. 594, §29 (AMD).]

**3. Fees and mileage.** Fees and mileage payments shall be paid to witnesses at the rate allowed to witnesses attending the District Courts. The fees and mileage payments shall be paid out of the Military Fund. [PL 1983, c. 460, §3 (NEW).]

**4. Violation.** It is a Class E crime for a person not subject to this Code intentionally to fail to appear as a witness, refuse to qualify as a witness or refuse to produce evidence if that person:

A. Has been subpoenaed to give testimony or produce evidence; or [PL 1983, c. 460, §3 (NEW).]

B. Has been paid fees and mileage as a witness. [PL 1983, c. 460, §3 (NEW).]

[PL 1983, c. 460, §3 (NEW).]

**5. Prosecution.** The Attorney General may prosecute persons who violate this section. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §29 (AMD).

#### §428. Execution of sentences

**1. Imprisonment.** Under instructions issued by the Governor, a sentence of imprisonment adjudged by a court-martial, 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 imprisonment in any place designated as provided in section 408. Persons confined in a correctional center not under the control of one of the military forces are subject to the same discipline and treatment as persons committed by the courts of the State.

Any period of imprisonment included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to imprisonment is suspended or deferred must be excluded in computing the service of the term of imprisonment. [PL 2001, c. 662, §53 (AMD).]

**2. Forfeiture.** Whenever a sentence includes both a forfeiture of pay and allowances and imprisonment and the imprisonment is not suspended or deferred, the forfeiture may apply only to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. [PL 1983, c. 460, §3 (NEW).]

**3. Effective date.** Sentences of courts-martial are effective on the date ordered executed, except another date may be required by subsection 1 or 2. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §53 (AMD).

#### §429. Record of trial

After a trial by court-martial, the record shall be forwarded to the convening 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 any officer exercising court-martial jurisdiction. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §430. State judge advocate's opinion

The convening authority shall refer the record of each court-martial to the state judge advocate, who shall submit 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 be limited to questions of jurisdiction. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §431. Approval of findings and sentence

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as the convening authority finds correct in law and fact and as the convening authority in the convening authority's discretion determines should be approved. Unless the convening authority indicates otherwise, approval of the sentence is approval of the findings and sentence. [RR 2019, c. 1, Pt. B, §32 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §32 (COR).

#### §432. Reconsideration

**1. Return of record.** If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action. [PL 1983, c. 460, §3 (NEW).]

**2. Errors.** Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be

rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case may the record be returned:

- A. For reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; [PL 1983, c. 460, §3 (NEW).]
  - B. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this Code; or [PL 1983, c. 460, §3 (NEW).]
  - C. For increasing the severity of the sentence, unless the sentence imposed is less than the mandatory sentence prescribed for the offense. [PL 1983, c. 460, §3 (NEW).]
- [PL 1983, c. 460, §3 (NEW).]

**3. Rehearing.** A rehearing must be ordered as follows.

- A. If the convening authority disapproves of the findings and sentence, the convening authority shall state the reasons for disapproval, and may order a rehearing, except where there is lack of sufficient evidence in the record to support the findings. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges. [RR 2019, c. 1, Pt. B, §33 (COR).]
  - B. Each rehearing must take place before a court-martial composed of members who were not members of the court-martial that first heard the case. Upon a rehearing, the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial. No sentence 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. [RR 2019, c. 1, Pt. B, §33 (COR).]
- [RR 2019, c. 1, Pt. B, §33 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §33 (COR).

#### §433. Appeal

Upon petition of the accused, the Supreme Judicial Court shall review the record of any court-martial approved by the convening authority. [PL 2001, c. 662, §54 (AMD).]

The accused shall file the petition for review within 30 days of the time the accused is notified of the approval of the case by the convening authority. [PL 2001, c. 662, §54 (AMD).]

On the same date that the accused files the petition for review in the Supreme Judicial Court, the accused shall file a notice of the accused's intention to appeal with the convening authority. Within 30 days, the convening authority shall forward the complete transcript of the case to the Supreme Judicial Court. [PL 2001, c. 662, §54 (AMD).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §54 (AMD).

#### §434. Judicial review

In any case reviewed by it, the Supreme Judicial Court may act with respect to any of the findings and sentence as approved by the convening authority. The Supreme Judicial Court shall take action only with respect to matters of law. [PL 1983, c. 460, §3 (NEW).]

If the Supreme Judicial Court sets aside the findings and sentence, it may order a rehearing, except where the setting aside is based on lack of sufficient evidence in the record to support the findings. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. [PL 1983, c. 460, §3 (NEW).]

After it has acted on a case, the Supreme Judicial Court may direct the convening authority to take action in accordance with its decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, the convening authority may dismiss the charges. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### **§435. Approval by the Governor**

No court-martial sentence may be executed until approved by the Governor. The Governor shall approve the sentence or such part, amount or commuted form of the sentence as the Governor sees fit, and may suspend the execution of the sentence or any part of the sentence. [RR 2019, c. 1, Pt. B, §34 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §34 (COR).

#### **§436. New trial**

At any time after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate for a new trial on the grounds of newly discovered evidence or fraud on the court. The state judge advocate shall review the petition, the record and such other evidence as the state judge advocate considers appropriate and report to the convening authority the state judge advocate's recommendation to grant or deny a new trial. If a new trial is recommended, the convening authority shall order a rehearing as provided in section 432, subsection 3. Upon filing of the petition for a new trial, any proceedings pending upon appeal or review of sentence must be dismissed. [RR 2019, c. 1, Pt. B, §35 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 1983, c. 594, §30 (AMD). RR 2019, c. 1, Pt. B, §35 (COR).

#### **§437. Restoration of rights**

All rights, privileges and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and that executed part is included in a sentence imposed upon the new trial or rehearing. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### **§438. Included offenses**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### **§439. Attempts**

An act done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense. [PL 1983, c. 460, §3 (NEW).]

Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed. [PL 1983, c. 460, §3 (NEW).]

Any person subject to this Code may be convicted of an attempt to commit an offense although it appears at the trial that the offense was consummated. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §440. Conspiracy

Any person subject to this Code who conspires with any other person to commit an offense under this Code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. [PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

#### §441. Desertion

**1. Acts constituting.** Any member of the military forces who commits any of the following acts is guilty of desertion:

A. Without authority, goes or remains absent from the member's unit, organization or place of duty with intent to remain away permanently; [RR 2019, c. 1, Pt. B, §36 (COR).]

B. Quits the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or [RR 2019, c. 1, Pt. B, §36 (COR).]

C. Being a commissioned officer of the military forces who, after tender of the member's resignation and before notice of acceptance, quits the member's post or proper duties without leave and with intent to remain away permanently. [RR 2019, c. 1, Pt. B, §36 (COR).]

[RR 2019, c. 1, Pt. B, §36 (COR).]

**2. Punishment.** Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

[PL 1983, c. 460, §3 (NEW).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §36 (COR).

#### §442. Absent without leave

Any member of the military forces who, without authority, fails to go to the member's appointed place of duty at the time prescribed, or goes from that place, or leaves or remains absent from the member's unit, organization or place of duty at which the member is required to be at the time prescribed, must be punished as a court-martial may direct. [RR 2019, c. 1, Pt. B, §37 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §37 (COR).

#### §443. Missing movement

Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft or unit with which the person is required in the course of duty to move must be punished as a court-martial may direct. [RR 2019, c. 1, Pt. B, §38 (COR).]

#### SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §38 (COR).

**§444. Disrespect to officer**

Any person subject to this Code who behaves with disrespect toward a superior officer must be punished as a court-martial may direct. [PL 2001, c. 662, §55 (AMD).]

## SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §55 (AMD).

**§445. Striking or disobeying an officer**

Any person subject to this Code who strikes a superior officer or draws or lifts up any weapon or offers any violence against a superior officer while that officer is in the execution of that office or willfully disobeys a lawful command of the superior officer must be punished as a court-martial may direct. [PL 2001, c. 662, §56 (AMD).]

## SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §56 (AMD).

**§446. Striking or disobeying a noncommissioned officer**

Any member who strikes or assaults an officer or noncommissioned officer while that officer or noncommissioned officer is in the execution of that office, willfully disobeys the lawful order of an officer or noncommissioned officer, or treats with contempt or is disrespectful in language or deportment toward an officer or noncommissioned officer while that officer or noncommissioned officer is in the execution of that office must be punished as a court-martial may direct. [PL 2001, c. 662, §57 (AMD).]

## SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §57 (AMD).

**§447. Failure to obey order**

Any person subject to this Code who violates or fails to obey any lawful general order or regulation, or having knowledge of any other lawful order issued by a member of the military forces, that it is the person's duty to obey, fails to obey the order, or is derelict in the performance of the person's duties, must be punished as a court-martial may direct. [RR 2019, c. 1, Pt. B, §39 (COR).]

## SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §39 (COR).

**§448. Mutiny; sedition**

**1. Offense.** Any person subject to this Code who:

A. With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do the person's duty or creates any violence or disturbance is guilty of mutiny; [RR 2019, c. 1, Pt. B, §40 (COR).]

B. With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority is guilty of sedition; or [PL 1983, c. 460, §3 (NEW).]

C. Fails to do the person's utmost to prevent and suppress a mutiny or sedition being committed in the person's presence, or fails to take all reasonable means to inform the person's superior commissioned officer or commanding officer of a mutiny or sedition that the person knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition. [RR 2019, c. 1, Pt. B, §41 (COR).]

[RR 2019, c. 1, Pt. B, §§40, 41 (COR).]

**2. Punishment.** A person who is found guilty of attempted mutiny, mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

[PL 1983, c. 460, §3 (NEW).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §§40, 41 (COR).

**§449. Breaking arrest**

Any person subject to this Code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct. [PL 1983, c. 460, §3 (NEW).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

**§450. Under influence of alcohol or drugs on duty**

Any person subject to this Code who is found under the influence of alcoholic liquor or any drug while on duty or reporting for duty must be punished as a court-martial may direct. [PL 2001, c. 662, §58 (AMD).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). PL 2001, c. 662, §58 (AMD).

**§451. Sentinels**

Any sentinel or lookout who is found sleeping upon the sentinel's or lookout's post or who leaves it before the sentinel or lookout is regularly relieved must be punished as a court-martial may direct. [RR 2019, c. 1, Pt. B, §42 (COR).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §42 (COR).

**§452. Feigning illness to avoid duty**

Any person subject to this Code who for the purpose of avoiding work, duty or service feigns illness, physical disablement, mental lapse or derangement or intentionally inflicts self-injury shall be punished as a court-martial may direct. [PL 1983, c. 460, §3 (NEW).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

**§453. False testimony**

Any person subject to this Code who in a judicial proceeding or in a court of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct. [PL 1983, c. 460, §3 (NEW).]

SECTION HISTORY

PL 1983, c. 460, §3 (NEW).

**§454. False official statements**

Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing it is false, or makes any other false official statement, knowing it is false, must be punished as a court-martial may direct. [PL 1995, c. 214, §1 (NEW).]

SECTION HISTORY



PL 1995, c. 214, §1 (NEW).

**§455. Cruelty and maltreatment**

Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to that person's orders must be punished as a court-martial may direct. [PL 2001, c. 662, §59 (NEW).]

SECTION HISTORY

PL 2001, c. 662, §59 (NEW).

**§456. Military property of United States or State; sale, loss, damage, destruction or wrongful disposition**

Any person subject to this Code must be punished as a court-martial may direct if that person, without proper authority, does any of the following with any military property of the United States or the State: [PL 2001, c. 662, §59 (NEW).]

**1. Sells.** Sells or otherwise disposes of that military property; [PL 2001, c. 662, §59 (NEW).]

**2. Damages or loses.** Willfully or through neglect damages, destroys or loses that military property; or [PL 2001, c. 662, §59 (NEW).]

**3. Suffers to be lost; sold.** Willfully or through neglect suffers that military property to be lost, damaged, destroyed, sold or wrongfully disposed of. [PL 2001, c. 662, §59 (NEW).]

SECTION HISTORY

PL 2001, c. 662, §59 (NEW).

**§457. Wrongful possession of controlled substance**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Controlled substance" means:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, cannabis and any compound or derivative of any such substance;

(2) Any substance not specified in subparagraph (1) that is listed on a schedule of controlled substances prescribed by the President of the United States for the purposes of the Uniform Code of Military Justice; and

(3) Any other substance not specified in subparagraph (1) or contained on a list prescribed by the President of the United States under subparagraph (2) that is listed in schedules I to V of Section 202 of the Controlled Substances Act, 21 United States Code, Section 812. [PL 2001, c. 662, §59 (NEW); PL 2021, c. 669, §5 (REV).]

[PL 2001, c. 662, §59 (NEW); PL 2021, c. 669, §5 (REV).]

**2. Prohibition.** Any person subject to this Code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the state military forces a controlled substance described in subsection 1, must be punished as a court-martial may direct. [PL 2001, c. 662, §59 (NEW).]

SECTION HISTORY

PL 2001, c. 662, §59 (NEW). PL 2021, c. 669, §5 (REV).

**§458. Larceny and wrongful appropriation**

**1. Prohibitions.** 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 the person's own use or the use of any person other than the owner, steals that property and is guilty of larceny; or [PL 2001, c. 662, §59 (NEW).]

B. With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, is guilty of wrongful appropriation. [PL 2001, c. 662, §59 (NEW).]

[PL 2001, c. 662, §59 (NEW).]

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

[PL 2001, c. 662, §59 (NEW).]

## SECTION HISTORY

PL 2001, c. 662, §59 (NEW).

**§459. Assault**

**1. Prohibition; assault.** Any person subject to this Code who 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.

[PL 2001, c. 662, §59 (NEW).]

**2. Prohibition; aggravated assault.** Any person subject to this Code is guilty of aggravated assault if that person:

A. Commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or [PL 2001, c. 662, §59 (NEW).]

B. Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon. [PL 2001, c. 662, §59 (NEW).]

[PL 2001, c. 662, §59 (NEW).]

**3. Punishment.** Any person found guilty of assault or aggravated assault must be punished as a court-martial may direct.

[PL 2001, c. 662, §59 (NEW).]

## SECTION HISTORY

PL 2001, c. 662, §59 (NEW).

**§460. Behavior that is prejudicial to good order and discipline of military forces or that discredits military forces**

Any person subject to this Code who behaves in a manner that is prejudicial to the good order and discipline of the military forces or that discredits the military forces must be punished as a court-martial may direct. [PL 2009, c. 406, §7 (NEW).]

## SECTION HISTORY

PL 2009, c. 406, §7 (NEW).

**§461. Sexual assault**

**1. Prohibition; sexual assault.** Any person subject to this Code who commits an offense prohibited under Title 17-A, chapter 11 is guilty of that offense under this Code.

[PL 2013, c. 251, §6 (NEW).]

**2. Punishment.** Any person found guilty of an offense prohibited under Title 17-A, chapter 11 must be punished as a court-martial may direct.

[PL 2013, c. 251, §6 (NEW).]

#### SECTION HISTORY

PL 2013, c. 251, §6 (NEW).

#### §462. Operating under the influence

**1. Prohibition; operating under the influence.** Any person subject to this Code who commits an offense prohibited under Title 29-A, section 2411 is guilty of that offense under this Code.

[PL 2019, c. 341, §15 (NEW).]

**2. Punishment.** Any person subject to this Code who is found guilty of an offense prohibited under Title 29-A, section 2411 may be punished as a court-martial may direct.

[PL 2019, c. 341, §15 (NEW).]

#### SECTION HISTORY

PL 2019, c. 341, §15 (NEW).

#### §463. Harassment

**1. Prohibition; criminal harassment.** Any person subject to this Code who commits an offense prohibited under Title 17-A, section 506-A is guilty of that offense under this Code.

[PL 2021, c. 634, Pt. B, §12 (NEW).]

**2. Punishment.** Any person found guilty of an offense prohibited under Title 17-A, section 506-A must be punished as a court-martial may direct.

[PL 2021, c. 634, Pt. B, §12 (NEW).]

#### SECTION HISTORY

PL 2021, c. 634, Pt. B, §12 (NEW).

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