



## 1                   PART II. LOUISIANA CODE OF MILITARY JUSTICE

## 2                                   SUBPART A. DEFINITIONS

## 3           §101. Article 1. Definitions

4                   A. In this code, unless the context otherwise requires:

5                           (1) "State military forces" means the national guard of the state, as defined  
6                   in Section 101(3), (4) and (6) of Title 32, United States Code, and any other military  
7                   forces organized under the laws of the state, when not in a status subjecting them to  
8                   jurisdiction under Chapter 47 of Title 10, United States Code.

9                           (2) "Commanding officer" includes only commissioned officers.

10                           (3) "Superior commissioned officer" means a commissioned officer superior  
11                   in rank or command.

12                           (4) "Enlisted member" means a person in an enlisted grade.

13                           (5) "Grade" means a step or degree, in a graduated scale of office or military  
14                   rank, that is established and designated as a grade by law or regulation.15                           (6) "Rank" means the order of precedence among members of the state  
16                   military forces.17                           (7) "Duty status" means duty in the state military forces under an order  
18                   issued by authority of law, and includes travel to and from such duty.

19                           (8) "Military court" means a court-martial or a court of inquiry.

20                           (9) "Military judge" means ~~an official of a general or special court-martial~~  
21                   ~~detailed in accordance with R.S. 29:126.~~ judge advocate designated under R.S.  
22                   29:126(c) of this Chapter who is detailed under R.S. 29:126(a) or 130(a).23                           ~~(10) "Legal officer" means any commissioned officer of the state military~~  
24                   ~~forces designated to perform legal duties for a command.~~25                           ~~(11)~~(10) "State judge advocate" means the commissioned officer responsible  
26                   for supervising the administration of military justice in the state military forces.27                           ~~(12)~~(11) "Accuser" means a person who signs and swears to charges, any  
28                   person who directs that charges nominally be signed and sworn to by another, and

1 any person who has an interest other than an official interest in the prosecution of the  
2 accused.

3 ~~(13)~~(12) "State" means the state of Louisiana.

4 ~~(14)~~(13) "Adjutant general" means the officer ~~who, under the laws of this~~  
5 ~~state, performs the duties of that office.~~ who is appointed by the governor under R.S.  
6 29:10.

7 ~~(15)~~(14) "Oath" includes affirmation.

8 (15) "Record" when used in connection with the proceedings of a court-  
9 martial, means:

10 (a) an official written transcript, written summary, or other writing related  
11 to the proceedings; or

12 (b) an official audiotape, videotape, or similar material from which sound,  
13 or sound and visual images, depicting the proceedings may be reproduced.

14 (16) "Classified information" means:

15 (a) any information or material that has been determined by an official of the  
16 United States pursuant to law, an Executive Order, or regulation to require protection  
17 against unauthorized disclosure for reasons of nation security; and

18 (b) any restricted data, as defined in section 11(v) of the Atomic Energy Act  
19 of 1954 (42 U.S.C. §2014(y)).

20 (17) "National Security" means the national defense and foreign relations of  
21 the United States.

22 \* \* \*

23 §102. Article 2. Persons subject to this code

24 \* \* \*

25 D. This code applies to all persons in custody of a federal, state or local  
26 penal institution while serving a sentence imposed by a court-martial convened under  
27 this Chapter.

1 §103. Article 3. Jurisdiction to try certain personnel

2 A. Subject to Article 43 of this Chapter, a person who is in a status in which  
3 the person subject to this Chapter and who committed an offense against this Chapter  
4 while formerly in a status in which the person was subject to this Chapter is not  
5 relieved from amenability to the jurisdiction of this Chapter for that offense by  
6 reason of a termination of that person's former status.

7 ~~A.B.~~ Each person discharged from the state military forces who is later  
8 charged with having fraudulently obtained his discharge is subject to trial by court-  
9 martial on that charge and is after apprehension subject to this code while in the  
10 custody of the military for that trial. Upon conviction of that charge he is subject to  
11 trial by court-martial for all offenses under this code committed before the fraudulent  
12 discharge.

13 ~~B.C.~~ No person who has deserted from the state military forces may be  
14 relieved from amenability to the jurisdiction of this code by virtue of a separation  
15 from any later period of service.

16 \* \* \*

17 §106. Article 6. Judge advocates and legal officers

18 \* \* \*

19 ~~E. No person who has acted as a member, military judge, trial counsel,~~  
20 ~~assistant trial counsel, defense counsel, assistant defense counsel, or investigating~~  
21 ~~officer in any case may later act as staff judge advocate or legal officer to any~~  
22 ~~reviewing authority upon the same case. (1) No person who, with respect to a case,~~  
23 ~~serves in a capacity specified in Paragraph (2) of this Subsection may later serve as~~  
24 ~~a judge advocate or legal officer to any reviewing or convening authority upon the~~  
25 ~~same case.~~

26 (2) The capacities referred to in Paragraph (1) of this Subsection are, with  
27 respect to the case involved, any of the following:

28 (a) Preliminary hearing officer, court member, military judge, military  
29 magistrate, or appellate judge.





1 (b) only a military judge, if before the court is assembled the accused,  
2 knowing the identity of the military judge, and after consultation with defense  
3 counsel, requests, orally on the record or in writing a court composed only of a  
4 military judge and the military judge approves the request.

5 (2)(a) special courts-martial, consisting of a military judge and not less than  
6 six members, subject to Article 25(E)(3) and Article 29 of this Code; or

7 (b) only a military judge, ~~if before the court is assembled the accused,~~  
8 ~~knowing the identity of the military judge, and after consultation with defense~~  
9 ~~counsel, requests in writing a court composed only of a military judge and the~~  
10 ~~military judge approves.~~ under either of the following methods:

11 (i) if the case is so referred by the convening authority, subject to Article  
12 19(D) of this Code and such limitations as may be set forth in rules or regulations  
13 prescribed under Article 36 of this Code.

14 (ii) if the case is referred under Subparagraph (a) of this Paragraph and,  
15 before the court is assembled the accused, knowing the identity of the military judge,  
16 and after consultation with defense counsel, requests, orally on the record or in  
17 writing, a court composed only of a military judge and military judge approves the  
18 request.

19 (3) summary courts-martial, consisting of one commissioned officer.

20 \* \* \*

21 §118. Article 18. General courts-martial

22 A. ~~In the National Guard not in federal service, general courts-martial may~~  
23 ~~be convened by the governor or the adjutant general.~~ Subject to R.S. 29:117, general  
24 courts-martial have jurisdiction to try persons subject to this Chapter for any offense  
25 made punishable by this Chapter and may, under such limitations as the Adjutant  
26 General may prescribe, adjudge any punishment not forbidden by this Chapter.

27 B. In the National Guard not in federal service, general courts-martial may  
28 be convened by the governor or the Adjutant General.

- 1            ~~B.C.~~ A general court-martial may sentence to:
- 2            (1) A fine of not more than one thousand dollars.
- 3            (2) Forfeiture of pay and allowances.
- 4            (3) A reprimand.
- 5            (4) Dismissal, bad conduct discharge, or dishonorable discharge.
- 6            (5) Reduction of a noncommissioned officer to the ranks.
- 7            (6) Confinement of not more than two years.
- 8            (7) Any combination of these punishments.

9            §119. Article 19. Special courts-martial

10           A. Subject to Article 17 of this Code, special courts-martial have jurisdiction  
11           to try persons subject to this Code for any offense made punishable by this Code. A  
12           special courts-martial may not try a commissioned officer.

13           ~~A.B.~~ In the national guard not in federal service, the commanding officer of  
14           a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops  
15           are on duty, or of a brigade, regiment, wing, group, detached battalion, separate  
16           squadron, or other detached command, may convene special courts-martial. Special  
17           courts-martial may also be convened by superior authority.

18           ~~B. A special court-martial may not try a commissioned officer.~~

- 19           C. A special court-martial may sentence to:
- 20           (1) A fine of not more than two hundred dollars.
- 21           (2) Forfeiture of pay and allowances.
- 22           (3) A reprimand.
- 23           (4) Bad conduct discharge or dishonorable discharge.
- 24           (5) Reduction of a noncommissioned officer to the ranks.
- 25           (6) Confinement of not more than twelve months.
- 26           (7) Any combination of these punishments.

27           D. If the charges and specifications are referred to a special court-martial  
28           consisting of a military judge alone under R.S. 29:116(C)(2)(a):





1 ~~be tried by a general court-martial, the membership of which does not include~~  
2 ~~enlisted members in a number comprising at least one-third of the total membership~~  
3 ~~of the court, unless eligible members cannot be obtained on account of physical~~  
4 ~~conditions or military exigencies. If such members cannot be obtained, the court~~  
5 ~~may be assembled and the trial held without them, but the convening authority shall~~  
6 ~~make a detailed written statement, to be appended to the record, stating why they~~  
7 ~~could not be obtained.~~ is eligible to serve on a general or special court-martial for the  
8 trial of any other enlisted member.

9 (2) ~~In this Section, the word "unit" means any regularly organized body of~~  
10 ~~the state military forces not larger than a company, a squadron, a division of the~~  
11 ~~naval militia, or a body corresponding to one of them. Before a court-martial with~~  
12 ~~a military judge and members is assembled for trial, an enlisted member who is~~  
13 ~~accused may personally request, orally on the record or in writing, that:~~

14 (a) the membership of the court-martial be comprised entirely of officers; or

15 (b) enlisted members comprise at least one-third of the membership of the  
16 court-martial, regardless of whether enlisted members have been detailed to the  
17 court-martial.

18 (3) Except as provided in Paragraph (4) of this Subsection, after such a  
19 request, the accused may not be tried by a general or special court-martial if the  
20 membership of the court-martial is inconsistent with the request.

21 (4) If, because of physical conditions or military exigencies, a sufficient  
22 number of eligible officers or enlisted members, as the case may be, are not available  
23 to carry out Paragraph (2) of this Subsection, the trial may nevertheless be held. In  
24 that event, the convening authority shall make a detailed written statement of the  
25 reasons for nonavailability. The statement shall be appended to the record.

26 D. The accused in a court-martial with a military judge and members may,  
27 after the findings are announced and before any matter is presented in the sentencing  
28 phase, request, orally on the record or in writing, sentencing by the members.



1 rules prescribed under Article 36 of this Code, a military judge of a general or special  
2 court-martial shall be designated for detail by the state judge advocate.

3 (2) A commissioned officer who is certified to be qualified for duty as a  
4 military judge of a general court-martial may perform duties of a judicial or  
5 nonjudicial nature other than those relating to the officer's primary duty as a military  
6 judge of a general court-martial when such duties are assigned to the officer by or  
7 with the approval of the state judge advocate.

8 D. No person is eligible to act as a military judge in a case if he is the  
9 accuser or a witness for the prosecution or has acted as investigating officer,  
10 preliminary hearing officer, or as a counsel in the same case.

11 \* \* \*

12 F. A military judge may be detailed under Subsection A of this Section to a  
13 court-martial or a proceeding under R.S. 29:130.1 that is convened in a different  
14 armed force or another state military force, when so permitted by the state judge  
15 advocate.

16 §126a. Article 126a. Military magistrates

17 A. A military magistrate shall be a commissioned officer of the state military  
18 forces who:

19 (1) Is a member of the bar of a federal court or a member of the bar of the  
20 highest court of a State; and

21 (2) Is certified to be qualified, by reason of education, training, experience,  
22 and judicial temperament, for duty as a military magistrate by the state judge  
23 advocate.

24 B. In accordance with the Federal Rules of Courts-Martial or regulations  
25 prescribed by the governor or adjutant general, in addition to duties when designated  
26 under R.S. 29:119 or 130.1, a military magistrate may be assigned to perform other  
27 duties of a nonjudicial nature.

1 §127. Article 27. Detail of trial counsel and defense counsel

2 A.(1) For each general and special court-martial the authority convening the  
3 court shall detail trial counsel and defense counsel, and such assistants as he  
4 considers appropriate. No person who has acted as investigating officer, military  
5 judge, or court member in any case may act later as trial counsel, assistant trial  
6 counsel, or, unless expressly requested by the accused, as defense counsel or  
7 assistant defense counsel in the same case. ~~No person who has acted for the~~  
8 ~~prosecution may act later in the same case for the defense, nor may any person who~~  
9 ~~has acted for the defense act later in the same case for the prosecution.~~

10 (2) No person who, with respect to a case, has served as a preliminary  
11 hearing officer, court member, military judge, military magistrate, or appellate judge,  
12 may later serve as trial counsel, assistant trial counsel, or, unless expressly requested  
13 by the accused, as defense counsel or assistant or associate defense counsel in the  
14 same case. No person who has acted for the prosecution may act later in the same  
15 case for the defense, nor may any person who has acted for the defense act later in  
16 the same case for the prosecution.

17 \* \* \*

18 C. ~~In the case of a special court-martial:~~

19 (1) ~~the accused shall be afforded the opportunity to be represented at the trial~~  
20 ~~by counsel having the qualifications prescribed under Subsection B of this Section~~  
21 ~~unless counsel having such qualifications cannot be obtained on account of physical~~  
22 ~~conditions or military exigencies. If counsel having such qualifications cannot be~~  
23 ~~obtained the court may be convened and the trial held by the convening authority~~  
24 ~~shall make a detailed written statement, to be appended to the record stating why~~  
25 ~~counsel with such qualifications could not be obtained;~~ Defense counsel and  
26 assistant defense counsel detailed for a special court-martial shall have the  
27 qualifications set forth in Subsection B of this Section.

28 (2) ~~if the trial counsel is qualified to act as counsel before a general court-~~  
29 ~~martial, the defense counsel detailed by the convening authority must be a person~~

1 ~~similarly qualified; and~~ Trial counsel and assistant defense counsel detailed for a  
2 special court-martial and assistant trial counsel detailed for a general court-martial  
3 must be determined to be competent to perform such duties by the state judge  
4 advocate or the Judge Advocate General of the United States Army or United States  
5 Air Force.

6 (3) if the trial counsel is a member of the bar of the highest court of a state,  
7 the defense counsel detailed by the convening authority must be one of the  
8 foregoing.

9 §128. Article 28. Detail or employment of reporters and interpreters

10 Under such regulations ~~as the governor may prescribe~~ prescribed under  
11 Article 36 of this Code, the convening authority of a general or special court-martial  
12 or court of inquiry shall detail or employ qualified court reporters, who shall record  
13 the proceedings of and testimony taken before that court. Under like regulations the  
14 convening authority of a ~~military court~~ court-martial or court of inquiry may detail  
15 or employ interpreters who shall interpret for the court.

16 §129. Article 29. ~~Absent and additional members~~ Assembly and impaneling of  
17 members; detail of new members and military judges

18 A. ~~No member of a general court-martial may be absent or excused after the~~  
19 ~~court has been assembled for the trial of the accused except for physical disability~~  
20 ~~or as the result of a challenge or by order of the convening authority for good cause.~~  
21 The military judge shall announce the assembly of a general or special court-martial  
22 with members. After such a court-martial is assembled, no member may be absent,  
23 unless the member is excused:

24 (1) As a result of a challenge.

25 (2) Under Subparagraph (B)(1)(b) of this Section.

26 (3) By order of the military judge or the convening authority for disability  
27 or other good cause.

28 B. ~~Whenever a general court-martial, other than a general court-martial~~  
29 ~~composed of a military judge only, is reduced below five members, the trial may not~~

1 ~~proceed unless the convening authority details new members sufficient in number~~  
2 ~~to provide not less than five members. The trial may proceed with the new members~~  
3 ~~present after the recorded evidence previously introduced before the members of the~~  
4 ~~court has been read to the court in the presence of the military judge, the accused,~~  
5 ~~and counsel for both sides. (1) Under rules prescribed under Article 36 of this Code,~~  
6 the military judge or a general or special court-martial with members shall:

7 (a) After determination of challenges, impanel the court-martial; and

8 (b) Excuse members who, having been assembled, are not impaneled.

9 (2) In a general court-martial, the military judge shall impanel eight  
10 members.

11 (3) In a special court-martial, the military judge shall impanel six members.

12 ~~C. If the military judge of a court-martial composed of a military judge only,~~  
13 ~~is unable to proceed with the trial because of physical disability, as a result of a~~  
14 ~~challenge, or for other good cause, the trial shall proceed, subject to any applicable~~  
15 ~~conditions of Article 16(1)(b) of the Louisiana Code of Military Justice after the~~  
16 ~~detail of a new military judge as if no evidence had previously been introduced~~  
17 ~~unless a verbatim record of the evidence previously introduced or a stipulation~~  
18 ~~thereof is read in court in the presence of the new military judge, the accused and~~  
19 ~~counsel for both sides. In addition to members under Subsection B of this Section,~~  
20 the military judge shall impanel alternate members, if the convening authority  
21 authorizes alternate members.

22 D.(1) If, after members are impaneled, the membership of the court-martial  
23 is reduced to fewer than six members with respect with respect to a general or special  
24 court-martial, the trial may not proceed unless the convening authority details new  
25 members and, from among the members so detailed, the military judge impanels new  
26 members sufficient to provide the membership specified in this Subsection.

27 E. If the military judge is unable to proceed with the trial because of  
28 disability or otherwise, a new military judge shall be detailed to the court-martial.

1           F.(1) In the case of new members under Subsection D of this Section, the  
2           trial may proceed with the new members present after the evidence previously  
3           introduced is read or, in the case of audiotape, videotape, or similar recording, is  
4           played, in the presence of the new members, the military judge, and counsel for both  
5           sides.

6           (2) In the case of a new military judge under Subsection E of this Section,  
7           the trial shall proceed as if no evidence had been introduced, unless the evidence  
8           previously introduced is read or, in the case of audiotape, videotape, or similar  
9           recording, is played, in the presence of the new military judge, the accused, and  
10          counsel for both sides.

11          §130. Article 30. Charges and specifications

12           A. ~~Charges and specifications shall be signed by a person subject to this code~~  
13           ~~under oath before a person authorized by this code to administer oaths and shall~~  
14           ~~state:~~

15           ~~(1) that the signer has personal knowledge of, or has investigated, the matters~~  
16           ~~set forth therein; and may be preferred only by a person subject to this Chapter; and~~

17           ~~(2) that they are true in fact to the best of his knowledge and belief; shall be~~  
18           ~~preferred by presentment in writing, signed under oath before a commissioned~~  
19           ~~officer of the state military forces who is authorized to administer oaths.~~

20           B. ~~Upon the preferring of charges, the proper authority shall take immediate~~  
21           ~~steps to determine what disposition should be made thereof in the interest of justice~~  
22           ~~and discipline, and the person accused shall be informed of the charges against him~~  
23           ~~as soon as practicable. The writing under Subsection A of this Section shall state~~  
24           ~~that:~~

25           ~~(1) The signer has personal knowledge of, or has investigated, that matter set~~  
26           ~~forth in the charges and specifications; and~~

27           ~~(2) The matters set forth in the charges and specifications are true, to the best~~  
28           ~~of the knowledge and belief of the signer.~~





1 preliminary hearing shall be conducted by an impartial hearing officer, detailed by  
2 the convening authority in accordance with Subsection C of this Section.

3 (b) Under regulations prescribed under Article 36 of this Code, a preliminary  
4 hearing need not be held if the accused submits a written waiver to the convening  
5 authority and the convening authority determines a hearing is not required.

6 (2) The purpose of the preliminary hearing shall be limited to determining  
7 the following:

8 (a) Whether or not the specification alleges an offense under this Chapter.

9 ~~(a) determining whether there is probable cause to believe an offense has~~  
10 ~~been committed and the accused committed the offense;~~ (b) Whether or not there is  
11 probably cause to believe that the accused committed the offense charged;

12 ~~(b) determining whether~~ (c) Whether or not the convening authority has  
13 court-martial jurisdiction over the offense and the accused;

14 ~~(c) considering the form of the charges; and~~

15 ~~(d) recommending~~ A recommendation as to the disposition that should be  
16 made of the case.

17 B. Hearing officer. (1) A preliminary hearing ~~conducted pursuant to~~  
18 ~~Subsection A of~~ under this Section shall be conducted by an impartial hearing  
19 officer, who: judge advocate certified under Article 27(B) of this code whenever  
20 ~~practicable or, in exceptional circumstances in which the interests of justice warrant,~~  
21 ~~by an impartial hearing officer who is not a judge advocate. If the hearing officer is~~  
22 ~~not a judge advocate, a judge advocate certified under Article 27(B) shall be~~  
23 ~~available to provide legal advice to the hearing officer.~~

24 (a) Whenever practicable, shall be a judge advocate who is certified under  
25 Article 27(B) of this Code; or

26 (b) When is it not practicable to appoint a judge advocate because of  
27 exceptional circumstances, the convening authority may detail an impartial  
28 commissioned officer, who is not the accuser, as a preliminary hearing officer.

1           (2) In the case of a hearing officer under Paragraph (1) of this Subsection,  
2           a judge advocate who is certified under Article 27(B) of this Code shall be available  
3           to provide legal advice to the hearing officer.

4           ~~(2)(3)~~ Whenever practicable, the ~~judge advocate or other~~ hearing officer  
5           ~~detailed to conduct a preliminary hearing~~ shall be equal to in grade or senior in grade  
6           to the military counsel detailed to represent the accused or the government at a the  
7           preliminary hearing.

8           C. Report of ~~results~~ to convening authority. At the conclusion of a  
9           preliminary hearing conducted pursuant to Subsection A of this Section, the ~~judge~~  
10          ~~advocate or other~~ hearing officer that conducted the preliminary hearing shall  
11          ~~prepare a~~ submit to the convening authority a written report, accompanied by a  
12          recording of the preliminary hearing under Subsection E of this Section, that  
13          ~~addresses the matters specified in Paragraph (A)(2) and Subsection F of this Section.~~  
14          includes the following:

15                 (1) For each specification, a statement of the reasoning and conclusion of the  
16                 hearing officer with respect to determinations under Paragraph (A)(2) of this Section,  
17                 including a summary of relevant witness testimony and documentary evidence  
18                 presented at this hearing and any observations of the hearing officer concerning the  
19                 testimony of witnesses and the availability and admissibility of evidence at trial.

20                 (2) Recommendations for any necessary modifications to the form of the  
21                 charges and specifications.

22                 (3) An analysis of any additional information submitted after the hearing by  
23                 the parties or by a victim of an offense, that, under such rules prescribed under  
24                 Article 36 of this Code, is relevant to disposition under R.S. 29:130 and 134.

25                 (4) A statement of action taken on evidence adduced with respect to  
26                 uncharged offenses, as described in Subsection F of this Section.

27           D. Rights of accused and victim. (1) The accused shall be advised of the  
28           charges against him and of his right to be represented by counsel at a preliminary  
29           hearing conducted pursuant to ~~Subsection A of this Section~~ Article. The accused has

1 the right to be represented at the preliminary hearing as provided in Article 38 of this  
2 Code and in regulations prescribed under that Article.

3 (2) The accused may cross-examine witnesses who testify at the preliminary  
4 hearing and present additional evidence ~~in defense and mitigation, relevant to the~~  
5 ~~limited purposes of the hearing, as provided for in Paragraph (4) of this Subsection~~  
6 ~~and Paragraph (A)(2) of this Section~~ that is relevant to the issues for determination  
7 under Paragraph (A)(2) of this Article.

8 (3) A victim may not be required to testify at a preliminary hearing. A  
9 victim who declines to testify shall be deemed to be not available for purposes of a  
10 preliminary hearing. A declination under this Paragraph shall not serve as the sole  
11 basis for ordering a deposition under Article 49 of this Code.

12 (4) The presentation of evidence and examination, including  
13 cross-examination, of witnesses at a preliminary hearing shall be limited to the  
14 matters relevant to ~~the limited purpose of the hearing, as provided in~~ determinations  
15 under Paragraph (A)(2) of this Section Article.

16 E. Recording of preliminary hearing. A preliminary hearing under  
17 Subsection A of this Section shall be recorded by a suitable recording device. The  
18 victim may request the recording and shall have access to the recording ~~as prescribed~~  
19 ~~by the Manual for Courts-Martial~~ under such rules prescribed under Article 36 of this  
20 Code.

21 \* \* \*

22 G. Effect of violation. The requirements of this Section are binding on all  
23 persons administering this Chapter, but failure to follow the requirement does not  
24 constitute jurisdictional error. A defect in a report under Subsection C of this Article  
25 is not a basis for relief in the report is in substantial compliance with that Subsection.

26 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1           §134. Article 34. Advice ~~of state judge advocate and reference to convening~~  
2                           authority before referral for trial

3           A. ~~Before directing the trial of any charge by general court-martial, the~~  
4           ~~convening authority shall refer it to the state judge advocate for consideration and~~  
5           ~~advice. The convening authority may not refer a charge to a general court-martial~~  
6           ~~for trial unless he has found that the charge alleges an offense under this code and~~  
7           ~~is warranted by evidence indicated in the report of the investigation.~~ General court-  
8           martial. (1) Before referral of charges and specifications to a general court-martial  
9           for trial, the convening authority shall submit the matter to the state judge advocate  
10           for advice, which the state judge advocate shall provide to the convening authority  
11           in writing. The convening authority may not refer a specification under a charge to  
12           a general court-martial unless the state judge advocate advises the convening  
13           authority in writing that:

14                   (a) The specification alleges an offense under this Code;

15                   (b) There is probable cause to believe that the accused committed the offense  
16           charged; and

17                   (c) A court-martial would have jurisdiction over the accused and the offense.

18           (2) Together with the written advice provided under Paragraph (1) of this  
19           Subsection, the state judge advocate shall provide a written recommendation to the  
20           convening authority as to the disposition that should be made of this specification in  
21           the interest of justice and discipline.

22           (3) When a convening authority makes a referral for trial by general court-  
23           martial, the written advice of the state judge advocate under Paragraph (1) of this  
24           Subsection and the written recommendation of the state judge advocate under  
25           Paragraph (2) of this Subsection with respect to each specification shall accompany  
26           the referral.

27           B. ~~If the charges or specifications are not formally correct or do not conform~~  
28           ~~to the substance of the evidence contained in the report of the investigating officer,~~  
29           ~~formal corrections, and such changes in the charges and specifications as are needed~~

1 ~~to make them conform to the evidence may be made.~~ Special court-martial. Before  
2 referral of charges and specifications to a special court-martial for trial, the  
3 convening authority shall consult a judge advocate on relevant legal issues.

4 C. Before referral for trial by general court-martial or special court-martial,  
5 changes may be made to charges and specifications:

6 (1) To correct errors in form; and

7 (2) When applicable, to conform to the substance of the evidence contained  
8 in a report under Subsection C of Article 32 of this Code.

9 D. In this Article, the term "referral" means the order of a convening  
10 authority that charges and specifications against an accused be tried by a specified  
11 court-martial.

12 §135. Article 35. Service of charges; ~~continuance~~ commencement of trial

13 A. The trial counsel to whom court-martial charges are referred for trial  
14 detailed for a court-martial under Article 27 of this Code shall cause to be served  
15 upon the accused a copy of the charges upon which trial is to be had and  
16 specifications referred for trial. Upon a showing of good cause, the military judge  
17 in a general or special court-martial may grant a continuance of any hearing in which  
18 the presence of the accused is required.

19 B.(1) Subject to Paragraphs (2) and (3) of this Subsection, no trial or other  
20 proceeding of a general court-martial or a special court-martial, including any  
21 session under Article 39(A) of this Code may be held over the objection of the  
22 accused:

23 (a) With respect to a general court-martial from the time of service through  
24 the fifth day after the date of service; of

25 (b) With respect to a special court-martial, from the time of service through  
26 the third day after date of service.

27 (2) An objection under Paragraph (1) of this Subsection may be raised only  
28 at the first session of the trial or other proceeding and only if the first session occurs  
29 before the end of the applicable period under Subparagraphs (1)(a) or (b) of this

1        Subsection. If the first session occurs before the end of the applicable period, the  
2        military judge shall, at that session, inquire as to whether the defense objects under  
3        this Subsection.

4                C. Upon a showing of good cause, the military judge in a general or special  
5        court-martial may grant a continuance of any hearing in which the presence of the  
6        accused is required.

7    \*        \*        \*

8        §138. Article 38. Duties of trial counsel and defense counsel

9                A. The trial counsel of a general or special court-martial shall prosecute in  
10        the name of the state, and shall, under the direction of the court, prepare the record  
11        of the proceedings.

12                B.(1) The accused has the right to be represented in his defense before a  
13        general or special court-martial by ~~civilian counsel if provided by him at his own~~  
14        ~~expense, or by military counsel of his own selection if reasonably available, or by the~~  
15        ~~defense counsel detailed under Article 27 of this code. Should the accused have~~  
16        ~~counsel of his own selection, the defense counsel, and assistant defense counsel, if~~  
17        ~~any, who were detailed, shall, if the accused so desires, act as his associate counsel;~~  
18        ~~otherwise they shall be excused by the military judge or by the president of a court-~~  
19        ~~martial without a military judge. or at a preliminary hearing under Article 32 of this~~  
20        Code as provided in this Subsection.

21                (2) The accused may be represented by civilian counsel if provided by him.

22                (3) The accused may be represented:

23                (a) By military counsel detailed under Article 27 of this Code; or

24                (b) By military counsel of his own selection if that counsel is reasonably  
25        available, as determined under regulations and rules of procedure prescribed under  
26        Article 36 of this Code,

27                (4) If the accused is represented by civilian counsel, the military counsel  
28        detailed or selected under Paragraph (3) of this Subsection shall act as associate  
29        counsel unless excused at the request of the accused.

1           (5) Except as provided under Paragraph (6) of this Subsection, if the accused  
2           is represented by military counsel of his own selection under Paragraph (3)(b), an  
3           military counsel detailed under Paragraph (3)(a) shall be excused.

4           (6) The accused is not entitled to be represented by more than one military  
5           counsel. However, the person authorized under regulations prescribed under Article  
6           27 of this Code to detail counsel, in his sole discretion:

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

8           (b) If the accused is represented by military counsel of his own selection  
9           under Paragraph (3)(b), may approve a request from the accused that military  
10          counsel detailed under Paragraph (3)(a) act as associate defense counsel.

11          C. In ~~every~~ any court-martial proceeding resulting in a conviction, the  
12          defense counsel may~~;~~ in the event of conviction,

13          (1) forward for attachment to the record of proceedings a brief of such  
14          matters he ~~feels~~ determines should be considered in behalf of the accused on review,  
15          including any objection to the contents of the record which he considers appropriate.

16          (2) take other action authorized by this Code.

17          D. An assistant trial counsel of a general court-martial may, under the  
18          direction of the trial counsel or when he is qualified to be a trial counsel as required  
19          by ~~R.S. 29:127~~ Article 27 of this Code, perform any duty imposed by law,  
20          regulation, or the custom of the service upon the trial counsel of the court. An  
21          assistant trial counsel of a special court-martial may perform any duty of the trial  
22          counsel.

23          E. An assistant defense counsel of a general or special court-martial may,  
24          ~~under the direction of the defense counsel or when he is qualified to be the defense~~  
25          ~~counsel as required by R.S. 29:127~~, perform any duty imposed by law, regulation,  
26          or the custom of the service upon counsel for the accused.

27          §139. Article 39. Sessions

28          A. At any time after the service of charges which have been referred for trial  
29          to a court-martial composed of a military judge and members, the military judge



1 may, subject to ~~R.S. 29:135~~ Article 35 of this Code, call the court into session  
2 without the presence of the members for the purpose of:

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

5 (2) hearing and ruling upon any matter which may be ruled upon by the  
6 military judge under this code, whether or not the matter is appropriate for later  
7 consideration or decision by the members of the court;

8 (3) ~~if permitted by regulations of the governor~~, holding the arraignment and  
9 receiving the pleas of the accused; ~~and~~

10 (4) conducting a sentencing proceeding and sentencing the accused; and

11 ~~(4)(5)~~ performing any other procedural function which may be performed  
12 by the military judge under this code or under rules prescribed pursuant to ~~R.S.~~  
13 ~~29:136~~ Article 36 and which does not require the presence of the members of the  
14 court.

15 B. ~~These proceedings~~ Proceedings under Subsection A of this Section shall  
16 be conducted in the presence of the accused, the defense counsel, and the trial  
17 counsel and shall be made a part of the record. These proceedings may be conducted  
18 notwithstanding the number of members of the court and without regard to Article  
19 29 of this Code. If authorized by procedures and regulations specified in Article 36  
20 of this Code, and if at least one defense counsel is physically in the presence of the  
21 accused, the presence required by this Subsection may otherwise be established by  
22 audiovisual technology, such as video conferencing technology.

23 B.C. When the members of a court-martial deliberate or vote, only the  
24 members may be present. All other proceedings, including any other consultation  
25 of the members of the court with counsel or the military judge, shall be made a part  
26 of the record and shall be in the presence of the accused, the defense counsel, the  
27 trial counsel, and ~~in cases in which a military judge has been detailed to the court,~~  
28 the military judge.

1 §140. Article 40. Continuances

2 The military judge or a summary court-martial ~~without a military judge~~ may,  
3 for reasonable cause, grant a continuance to any party for such time, and as often, as  
4 may appear to be just.

5 §141. Article 41. Challenges

6 A.(1) The military judge and the members of a general court-martial may be  
7 challenged by the accused or the trial counsel for cause stated to the court. The  
8 military judge ~~or, if none, the court~~ shall determine the relevancy and validity of  
9 challenges for cause, and may not receive a challenge to more than one person at a  
10 time. Challenges by the trial counsel shall ordinarily be presented and decided  
11 before those by the accused are offered.

12 (2) If exercise of a challenge for cause reduces the court below the number  
13 of members required by Article 16 of this Code, all parties shall, notwithstanding  
14 Article 29 of this Code, either exercise or waive any challenge for cause then  
15 apparent against the remaining members of the court before additional members are  
16 detailed to the court. However, peremptory challenges shall not be exercised at that  
17 time.

18 B.(1) Each accused and the trial counsel ~~is~~ are entitled initially to one  
19 peremptory challenge of members of the court. ~~, but the~~ The military judge may not  
20 be challenged except for cause.

21 (2) If exercise of a preemptory challenge reduces the court below the number  
22 of members required by Article 16 of this Code, the parties shall, notwithstanding  
23 Article 29 of this Code, either exercise or waive any remaining preemptory  
24 challenge, not previously waived, against the remaining members of the court before  
25 additional members are detailed to the court.

26 C. Whenever additional members are detailed to the court, and after any  
27 challenges for cause against such additional members are presented and decided,  
28 each accused and the trial counsel are entitled to one peremptory challenge against  
29 members not previously subject to preemptory challenge.

1 §142. Article 42. Oaths

2 A. Before performing their respective duties, military judges, members of  
3 a general and special court-martial, trial counsel, assistant trial counsel, defense  
4 counsel, assistant defense counsel, reporters and interpreters shall take an oath to  
5 perform their duties faithfully. The form of the oath, the time and place of the taking  
6 thereof, the manner of recording the same, and whether the oath shall be taken for  
7 all cases in which these duties are to be performed or for a particular case, shall be  
8 as prescribed in procedures and regulations of the governor prescribed in Article 36  
9 of this Code. These regulations may provide that an oath to perform faithfully duties  
10 as a military judge, trial counsel, assistant trial counsel, defense counsel or assistant  
11 defense counsel may be taken at any time by any judge advocate or legal officer, or  
12 other person certified to be qualified or competent for the duty, and if such an oath  
13 is taken it need not again be taken at the time the judge advocate or ~~legal officer~~ or  
14 other person is detailed to that duty.

15 B. Each witness before a court-martial shall be examined on oath.

16 §143. Article 43. Statute of limitations

17 A. A person charged with desertion, missing movement, ~~or~~ absence without  
18 leave in time of war, or with aiding the enemy or with mutiny may be tried and  
19 punished at any time without limitation.

20 B. Except as otherwise provided in this Article, a person charged with  
21 desertion in time of peace or with the offense punishable under ~~R.S. 29:231 and~~  
22 ~~29:232~~ Article 131 or Article 132 is not liable to be tried by court-martial if the  
23 offense was committed more than ~~three~~ five years before the receipt of sworn  
24 charges and specifications by an officer exercising summary court-martial  
25 jurisdiction over the command.

26 C. Except as otherwise provided in this Section, a person charged with any  
27 offense is not liable to be tried by court-martial or punished under R.S. 29:115 if the  
28 offense was committed more than two years before the receipt of sworn charges and

1 specifications by an officer exercising summary court-martial jurisdiction over the  
2 command or before the imposition of punishment under R.S. 29:115.

3 D.(1) Periods in which he accused is absent without authority or fleeing from  
4 just shall be excluded in computing the period of limitation prescribed in this Article.

5 (2) Periods in which the accused was absent from Louisiana or in the hands  
6 of the enemy shall be excluded in computing the period of limitation prescribed in  
7 this Article.

8 E.(1) If charges or specifications are dismissed are defective or insufficient  
9 for any cause and the period prescribed by the applicable statute of limitations has  
10 expired or will expire within one hundred eighty days after date of dismissal of the  
11 charges and specifications, trial and limitations if the conditions in Paragraph (2) of  
12 this Subsection are met.

13 (2) In order to move forward with new charges and specifications after  
14 dismissal as described in Paragraph (1) of this Subsection, the new charges and  
15 specifications must:

16 (a) Be received by an officer exercising summary court-martial jurisdiction  
17 over the offenses within one hundred eighty days after dismissal of the charges and  
18 specification; and

19 (b) Allege the same acts or omissions that were alleged in the dismissed  
20 charges or specifications, or alleged acts or omissions that were included in the  
21 dismissed charges or specifications.

22 F. A person charged with fraudulent enlistment or fraudulent appointment  
23 under Article 83 may be tried by court-martial if the sworn charges and  
24 specifications are received by an officer exercising summary court-martial  
25 jurisdiction with respect to that person as follows:

26 (1) In the case of an enlisted member, during the period of the enlistment or  
27 five years, whichever provides a longer period.

28 (2) In the case of an officer, during the period of the appointment or five  
29 years, whichever provides a longer period.



1           (1) Before a court-martial or court of inquiry;

2           (2) At a deposition under Article 49 of this Code; or

3           (3) As otherwise authorized under this Code.

4           D.(1) A subpoena or other process maybe issued to compel the production  
5 of evidence:

6           (a) For a court-martial or court of inquiry;

7           (b) For a deposition under Article 49 of this Code;

8           (c) For an investigation of an offense under this Code;

9           (d) As otherwise authorized under this Code.

10          (2) An investigative subpoena under Paragraph (1)(c) may be issued before  
11 referral of charges to a court-martial only if a general court-martial convening  
12 authority has authorize counsel for the Government to issue such a subpoena or a  
13 military judge issues such a subpoena pursuant to Article 30a of this Code.

14          (3) With respect to an investigation of an offense under this Code, a military  
15 judge detailed in accordance with Article 26 or 30a of this Code, may issue warrants  
16 or court orders for the contents of, and records concerning, wire or electronic  
17 communications in the same manner as such warrants and orders may be issued by  
18 a district court of this State, subject to rules prescribed under Article 36 of this Code.

19          E. If a person requests relief from a subpoena or other process under this  
20 Article on grounds that compliance is unreasonable or oppressive or is prohibited by  
21 law, a military judge detailed in accordance with Article 26 or 30a of this Code shall  
22 review the request and shall:

23           (1) Order that the subpoena or other process be modified or withdrawn, as  
24 appropriate; or

25           (2) Order the person to comply with the subpoena or other process.

26 §147. Article 47. Refusal to appear or testify

27          A.(1) Any person ~~not subject to this code~~ described in Paragraph (2) of this  
28 Subsection who:



1 demonstrates that, due to exceptional circumstances, it is in the best interest of  
2 justice that the testimony of a prospective witness be preserved for use at a court-  
3 martial, court of inquiry, or other military court or board.

4 (2) A party who request a deposition under this Article shall give to every  
5 other party reasonable notice of the time and place for the deposition. A deposition  
6 under this Article shall be taken before, and authenticated by, an impartial officer,  
7 as follows:

8 (a) Whenever practicable, by an impartial judge advocate certified under  
9 Article 27(B) of this Code.

10 (b) In exceptional circumstances, by an impartial military or civil officers  
11 authorized to administer oaths by the laws of the United States or the state of  
12 Louisiana.

13 ~~B. The party at whose instance a deposition is to be taken shall give to every~~  
14 ~~other party reasonable written notice of the time and place for taking the deposition.~~  
15 Representation of the parties with respect to a deposition shall be by counsel detailed  
16 in the same manner as trial counsel and defense counsel are detailed under Article  
17 27 of this Code. In addition, the accused shall have the right to be represented by  
18 civilian or military counsel in the same manner as such counsel are provided for in  
19 Article 38(B) of this Code.

20 ~~C. Depositions may be taken before and authenticated by any military or~~  
21 ~~civil officer authorized by the laws of this state or by the laws of the place where the~~  
22 ~~deposition is taken to administer oaths. A deposition order under Subsection A of~~  
23 this Article does not control the admissibility of the deposition in the court-martial  
24 or other proceeding under this Code.

25 ~~D. A duly authenticated deposition taken upon reasonable notice to the other~~  
26 ~~parties, so far as otherwise admissible under the rules of evidence, may be read in~~  
27 ~~evidence before any court-martial or in any proceeding before a court of inquiry, if~~  
28 ~~it appears:~~



1           ~~(1) that the witness is a nonresident, or resides beyond the distance of one~~  
2           ~~hundred miles from the place of trial or hearing;~~

3           ~~(2) that the witness by reason of death, age, sickness, bodily infirmity,~~  
4           ~~imprisonment, military necessity, nonamenability to process, or other reasonable~~  
5           ~~cause, is unable or refuses to appear and testify in person at the place of trial or~~  
6           ~~hearing; or~~

7           ~~(3) that the present whereabouts of the witness is unknown.~~

8           §150. Article 50. Admissibility of sworn testimony from records of courts of  
9           inquiry

10           A. In any case not extending to the dismissal of a commissioned officer, the  
11           sworn testimony, contained in the duly authenticated record of proceedings of a court  
12           of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise  
13           admissible under the rules of evidence mandated by Article 36 of this Code, be read  
14           in evidence by any party before a court-martial if the accused was a party before the  
15           court of inquiry and if the same issue was involved or if the accused consents to the  
16           introduction of such evidence.

17           B. Such testimony may be read in evidence only by the defense in cases  
18           extending to the dismissal of a commissioned officer.

19           C. Such testimony may also be read in evidence before a court of inquiry or  
20           a military board.

21           D. Sworn testimony that:

22           (1) Is recorded by audiotape, videotape, or similar method: and

23           (2) Is contained in the duly authenticated record of proceedings of a court of  
24           inquiry;

25           (3) Is admissible before a court-martial, court of inquiry, or military board,  
26           to the same extent as sworn testimony may be read in evidence before any such body  
27           under Subsections A, B, or C of this Article.

28                           \*       \*       \*

1           §153. Article 53. ~~Court to announce action~~ Findings and sentencing

2           ~~A court-martial shall announce its findings and sentence to the parties as soon~~  
3 ~~as determined.~~ A. Announcement. A court-martial shall announce its findings and  
4 sentence to the parties as soon as determined.

5           B. Sentencing Generally.

6           (1) General and Special Court-Martial

7           (a) Sentencing by Military Judge. Except as provided in Subparagraph (b)  
8 of this Paragraph, if the accused is convicted of an offense in a trial, the military  
9 judge shall sentence the accused.

10          (b) Sentencing by Members. If the accused is convicted of an offense by  
11 general or special court-martial consisting of a military judge and members and the  
12 accused elects sentencing by members under Article 25 of this Code, the members  
13 shall sentence the accused.

14          (c) Sentence of the Accused. The sentence determined pursuant to this  
15 Paragraph constitutes the sentence of the accused.

16          (2) Summary Courts-Martial. If the accused is convicted of an offense in a  
17 trial by summary court-martial, the court-martial shall sentence the accused.

18        §153a. Article 53a. Plea agreements

19          A.(1) At any time before the announcement of findings under Article 53 of  
20 this Code, the convening authority and the accused may enter into a plea agreement  
21 with respect to such matters as:

22          (a) The manner in which the convening authority will depose of one or more  
23 charges and specifications; and

24          (b) Limitations on the sentence that may be adjudged for one or more  
25 charges and specifications.

26          (2) The military judge of a general or special court-martial may not  
27 participate in discussions between the parties concerning prospective terms and  
28 conditions of a plea agreement.

1           B. The military judge of a general or special court-martial shall reject a plea  
2 agreement that:

3           (1) Contains a provision that has not been accepted by both parties;

4           (2) Contains a provision that is not understood by the accused;

5           (3) Except as provided in Subsection C of this Article, contains a provision  
6 for a sentence that is less than the mandatory minimum sentence applicable to an  
7 offense referred to in Article 56(B)(2) of this Code;

8           (4) Is prohibited by law; or

9           (5) Is contrary to, or is inconsistent with, rules promulgated by Article 36 of  
10 this Code with respect to terms, conditions, or other aspects of plea agreements.

11           C. With respect to an offense referred to in Article 56(B)(2) of this Code:

12           (1) The military judge may accept a plea agreement that provides for a  
13 sentence of bad conduct discharge; and

14           (2) Upon recommendation of the trial counsel, in exchange for substantial  
15 assistance by the accused in the investigation or prosecution of another person who  
16 has committed an offense, the military judge may accept a plea agreement that  
17 provides for a sentence that is less than the mandatory minimum sentence for the  
18 offense charged.

19           D. Upon acceptance by the military judge of a general or special court-  
20 martial, a plea agreement shall bind the parties and the court-martial.

21 §154. Article 54. Record of trial

22           A. Each general or special court-martial shall keep a separate record of the  
23 proceedings in each case brought before it, ~~and the record shall be authenticated by~~  
24 ~~the signature of the military judge. If the record cannot be authenticated by the~~  
25 ~~military judge by reason of his death, disability or absence, it shall be authenticated~~  
26 ~~by the signature of the trial counsel or by that of a member if the trial counsel is~~  
27 ~~unable to authenticate it by reason of his death, disability, or absence. In a court-~~  
28 ~~martial consisting of only a military judge the record shall be authenticated by the~~  
29 ~~court reporter under the same conditions which would impose such a duty on a~~

1 ~~member under this Subparagraph. If the proceedings have resulted in an acquittal~~  
2 ~~of all charges and specifications or, if not affecting a general or flag officer, in a~~  
3 ~~sentence not including discharge or confinement and not in excess of that which may~~  
4 ~~otherwise be adjudged by a special court-martial, the record shall contain such~~  
5 ~~matters as may be prescribed by regulations of the governor. The record shall be~~  
6 ~~certified by a court reporter, except that in the case of death, disability, or absence~~  
7 ~~of the court reporter, the record shall be certified by an official selected under rules~~  
8 ~~prescribed under Article 36 of this Code.~~

9 B. Each ~~special and~~ summary court-martial shall keep a separate record of  
10 the proceedings in each case, and the record shall contain the matter and shall be  
11 ~~authenticated~~ certified in the manner required by rules prescribed under Article 36  
12 ~~of this Code. such regulations as the governor may prescribe.~~

13 C.(1) Except as provided in Paragraph (2) of this Subsection, the record shall  
14 contain such matters as required by rules prescribed under Article 36 of this Code.

15 (2) In accordance with rules prescribed under Article 36 of this Code, a  
16 complete record or proceedings and testimony shall be prepared in any case of a  
17 sentence of dismissal, discharge, confinement for more than six months, or forfeiture  
18 of pay for more than six months.

19 ~~C.D.~~ A copy of the record of the proceedings of each general and special  
20 court-martial shall be given to the accused as soon as it is ~~authenticated~~ certified.

21 E. In the case of a general or special court-martial, upon request, a copy of  
22 all prepared records of the proceedings of the court-martial shall be given to the  
23 victim of the offense if the victim testified during the proceedings. The records of  
24 the proceedings shall be provided without charges and as soon as the records are  
25 certified. The victim shall be notified of the opportunity to receive the records of the  
26 proceedings.

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 360 Engrossed

2019 Regular Session

Jones

**Abstract:** Provides for a revision of the Code of Military Justice to align with provisions of the U.S. Code of Military Justice.

Present law provides for the Louisiana Code of Military Justice which applies to all members of the state military forces at all times and in all places.

Proposed law retains present law and adds that this Code applies to all persons in custody of federal, state, or local penal institution while serving a sentence imposed by a court-martial.

Present law has three different courts-martial in state military forces; general, special, and summary. A traditional special court-martial requires a military judge and at least six members.

Proposed law retains present law and creates a new special court martial that only requires a judge. The sentence is limited to no punitive discharge and confinement of not more than six months.

Present law outlines who is eligible to serve as a member of a court martial. Proposed law retains present law, however, it allows any enlisted member of a state military force to serve on a general or special court martial for the trial of another enlisted member. The accused also may request orally or in writing for the membership of his court martial to either be comprised of officers entirely or enlisted members which will comprise 1/3 of the membership of the court-martial.

Proposed law creates a new military magistrate position, and provides that this person can be assigned to preside over the proposed special court martial and pre-referral program proceedings.

Proposed law adds procedures by which the fitness of a military judge or military magistrate will be determined.

Present law requires that the advice of a state judge advocate be given before directing the trial of a general court-martial.

Proposed law requires the convening authority to receive a recommendation in writing from the state judge advocate before a referral of charges and specifications to a general court martial can be made. The written recommendation must include specification of alleged offenses, probable cause, and confirmation of jurisdiction.

Proposed law allows for subpoena or other process to be issued to compel a witness to appear and testify and provides for the manner and circumstances in which those subpoenas may be issued.

Proposed law binds the convening authority, the accused, and the military judge to plea agreements once signed by the accused and provides for the circumstances in which such agreements may be entered into.

Present law requires each general court martial to keep a separate record of the proceedings in each case brought before it.

Proposed law retains present law and requires special court-martial to keep a separate record. Requires for the records to be certified by a court reporter or an official. Also, requires for a copy of all prepared records of the proceedings of a court-martial to be given to the victim if they testified at trial at no cost to the victim.

Proposed law reorganizes many provisions of present law to align it with the U.S. Code of Military Justice.

(Amends R.S. 29:101(A), 103, 106(E), 110, 115(D), 116(A), 118, 119, 120(A) and (B), 125(C) and (D), 126(B),(C), and (D), 127 (A) and (C), 128, 129, 130, 132(A), (B), (C), (D), (E), and (G), 134, 135, 128, 139, 140, 141, 142, 143, 145(B), 146, 147(A), 149, 150, 153, and 154; Adds R.S. 29:102(D), 106a, 125(E) and (F), 126(F), 126a, 130a, 145(C), and 153a)