

Legal Services

MILITARY JUSTICE

ARKANSAS DEPARTMENT OF THE MILITARY
OFFICE OF THE ADJUTANT GENERAL
Camp Joseph T. Robinson
North Little Rock, AR 72112-2200
27 August 2019

UNCLASSIFIED

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SUMMARY OF CHANGE

NGAR 27-10

This minor revision updates the name of the Commanding General to MG Kendall Penn and changed the name of the Military Department of Arkansas to the Arkansas Department of the Military. The last major revision, dated 26 February 2019 included –

- Clarifies the issuance of process of subpoenas to include a military judge. (para 7-19. c.)
- Establishes the procedural rules for Courts-Martial shall be the same as those established by the United States Congress with the Governor of the State having executive authority over the military courts of the organized militia. (para 7-1)
- Changes the statutes of limitations a person charged with an offense can be tried by court-martial if the offense was committed within 5 years. (para 7-2. b.)
- Clarifies when a person can be punished by nonjudicial punishment if the offense was committed more than 2 years before imposition of nonjudicial punishment. (para 7-2. c.)
- Clarifies the actions and language of contempt and changes the punishment amount of the fine to five hundred dollars (\$500). (para 7-20.)
- Clarifies the meaning, period and intervals of “duty status” and travel to and from training periods. (para 2-2 a.-d.)
- Redefines persons subject to the Military Code of Arkansas. (para 2-1)
- Establishes the maximum punishment for each type of Court-Martial and the offense(s) (para 7-4., a.-c.)
- Redefines the qualifications and certifications of Special Victim Counsel (SVC) to practice in the Arkansas military courts when detailed without regard to the SVC’s licensing state. (Chap 5)
- Establishes the Convening Authority of a Special or General Court-Martial to detail a military court clerk to serve in that role in any appeal prescribed. (para 7-38., a.)
- Redefines the purpose of the preliminary hearing and the accused rights concerning the hearing and waiver of the preliminary hearing. (para 7-10.)
- Redefines the service of charges may be served on the accused or defense counsel. (para 7-8.)
- Clarifies that the appealing party pay for the certified transcripts and submit to the military court clerk the filing costs. (para 7-38., d.)

- Redefines and adds punitive Sections of the Military Code of Arkansas, and their elements; 12-64-814. Assault generally, 12-64-848. Adultery, 12-64-849. Retaliation, 12-64-850, Fraudulent use of credit cards, debit cards, and other access devices, 12-64-851. Prohibited activities by person in position of special trust, (para 8-1., m., uu., vv., and xx.)

27 August 2019

Legal Services

MILITARY JUSTICE

This regulation is established in accordance with Ark. Code Ann. §§ 12-61-103 and 12-60-104:

By Order of the Governor of Arkansas:

ASA HUTCHINSON

Official:

Major General Kendall Penn
*Commanding General and
The Adjutant General*

Colonel Jeffrey D. Wood

State Judge Advocate

History. This is a minor revision. The last major revision was in February 2019.

Summary. This regulation implements Act No. 50 of 1969, as amended. It includes changes through the 2019 legislative session. It also prescribes additional policies and procedures governing the administration of military justice for the general court-martial jurisdiction of the Arkansas National Guard.

Applicability. This regulation applies to all members of the Arkansas National Guard.

Proponent and exception authority. The proponent of this regulation is the Arkansas State Judge Advocate. The Commanding General has the authority to approve

exceptions or waivers to this regulation that are consistent with controlling law and regulations.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the State Judge Advocate.

Distribution. This publication is available in electronic media. Special distribution of this publication in paper will be made through channels to all levels of command in the Arkansas National Guard.

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CHAPTER 1 Overview

1-1. Purpose

This regulation prescribes policy and procedures governing the administration of military justice within the General Courts-Martial jurisdiction of the Governor of the State of Arkansas and the Commanding General of the Arkansas National Guard¹. The policies and limitations herein are not intended to impose jurisdictional requirements or procedural prerequisites on court-martial or non-judicial punishment proceedings. Failure to comply with this regulation does not affect the validity of any action or confer rights upon any accused not otherwise existing.

1-2. References

Appendix A lists required and related references and forms.

1-3. Uniform Code of Military Justice

All courts-martials under the Military Code of Arkansas² (“MCA”) shall follow similar forms and procedures provided for similar courts of the United States Army and United States Air Force while accounting for the differences in the types of duty status of members of the organized militia; **however, the Governor has executive authority over the military courts and may implement state-specific procedural rules when necessary and practical.**³ **All matters relating to the discipline and government of the Arkansas National Guard not otherwise provided for in the MCA⁴ or in regulations issued pursuant to the MCA,** shall be as prescribed by the customs and usage of the appropriate forces of the United States.⁵ The Uniform Code of Military Justice (“UCMJ”), case law decided pursuant to the UCMJ, and Army and Air Regulations used to implement military justice are recognized for their persuasive guidance in interpreting the MCA. These references may be used as guidance in the administration of military justice under the MCA.

1-4. Responsibilities

Commanders at every level of the Arkansas National Guard are responsible for training Servicemembers in the MCA annually.⁶

CHAPTER 2 Jurisdiction

2-1. Persons Subject to the MCA

This regulation is applicable to members of the Arkansas National Guard while in a Title 32 or State Active Duty status.⁷

¹ Ark Code Ann §12-64-406.

² Ark Code Ann §12-60-101, et seq.

³ Ark Code Ann §§12-64-402 and 12-64-508.

⁴ Ark. Code Ann. § 12-64-402(a).

⁵ Ark Code Ann §12-61-104.

⁶ Ark Code Ann § 12-64-107.

⁷ Ark Code Ann §12-60-102(19), Ark Code Ann §12-60-103, and Ark Code Ann §12-64-102(a).

2-2. Persons to be Tried or Punished

No person may be tried or punished for any offense provided for in this code, unless it was committed while he or she was in a duty status.⁸ Duty status means the time from the date when a person is required by the terms of a call or order to obey the call or order and includes any of the following periods:

- a. Travel to and from a training site or duty station;
- b. Intervals between consecutive periods of inactive duty training on the same day;
- c. Intervals between inactive duty training on consecutive days; or
- d. The entire day that inactive duty training is performed.⁹

2-3. Territorial Applicability of the MCA

The MCA applies to all persons in the Arkansas National Guard while they are serving inside or outside the state of Arkansas while in a Title 32 or State Active Duty Status¹⁰. Courts-martial may be convened and held in units of the Arkansas National Guard while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.¹¹

2-4. Commanding General of the Arkansas National Guard

The Arkansas National Guard is commanded by a general officer federally recognized or qualified for federal recognition.¹² On or about 4 August 2015, Governor Asa Hutchison, under this authority as Commander-in-Chief¹³, appointed the Adjutant General, Major General Kendall Penn, as the Commanding General of the Arkansas National Guard.

2-5. General Courts-Martial Convening Authorities (“GCMCA”), Special Courts-Martial Convening Authorities (“SPCMCA”), and Summary Courts-Martial Convening Authorities (“SCMCA”)

All commanders must understand their military justice responsibilities, subordinate and superior MCA non-judicial punishment authorities, and courts-martial convening chains of authority. Commanders should submit questions to the Chief of Military Justice for the respective Arkansas National Guard branch.

- a. GCMCA. The Governor of the State of Arkansas and the Commanding General of the Arkansas National Guard are GCMCA.¹⁴
- b. SPCMCA. Commanding officers of a military reservation¹⁵, or of a brigade, wing, group, or other detached command may convene special courts-martial.¹⁶ When any such commanding officer is an accuser, the court shall be convened by a superior competent authority.
- c. SCMCA. Commanding officers of a military reservation¹⁷, or of a brigade, wing, group, battalion, or other detached command may convene a convene summary courts-martial.¹⁸ Summary

⁸ Ark Code Ann §12-60-801.

⁹ Ark Code Ann §12-61-102 (19).

¹⁰ Ark Code Ann §12-64-101.

¹¹ Id.

¹² Ark Code Ann §12-61-201.

¹³ Ark Code Ann §12-61-102.

¹⁴ Ark Code Ann §12-64-406(a).

¹⁵ Ark Code Ann §12-63-201.

¹⁶ Ark Code Ann §12-64-406(b)(1).

¹⁷ Ark Code Ann §12-63-201.

¹⁸ Ark Code Ann §12-64-406(c)(1).a

courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him or her.

CHAPTER 3

Administration of Military Justice

3-1. General

A commander has a unique and powerful role in the military justice system. In that role, a commander has the authority to affect individual lives and the morale and readiness of his or her command. A commander has a duty to ensure that in disposing of alleged misconduct committed by Servicemembers within his or her command, he or she does so carefully, deliberately, and in strict compliance with applicable law and regulation. Servicemembers will rally behind and remain loyal to a thoughtful and fair commander. An unfair or unlawful approach to military justice adversely impacts the morale of a unit and compromises its war fighting effectiveness. Commanders must understand and comply with the following requirements when deciding how to dispose of allegations of misconduct:

- a. *Individualized treatment of each case.* The disposition decision is one of the most important and difficult decisions facing a commander. Each Servicemember deserves to have their case adjudicated based on the specific facts of the individual case. Each commander must make fair and individualized determinations for each case of misconduct. Commanders must carefully consider the factors set forth in Rule for Courts-Martial ("R.C.M.") 306. Commanders will not have an inflexible policy, either in disposition or punishment, towards the administration of justice based upon the type of offense committed or the grade of the offender.
- b. *Unlawful command influence.* Commanders will not order a subordinate to dispose of an incident of misconduct in a particular way. Equally important, commanders shall not seek to influence, either directly or indirectly, the decision of subordinate commanders when disposing of misconduct under the MCA. Each commander must exercise their independent discretion when determining or recommending an appropriate disposition for a Servicemember's alleged misconduct.
- c. *Treatment of a Servicemember pending MCA proceedings.* A commander may not punish a Servicemember accused of misconduct prior to the completion of MCA proceedings. Any treatment intended to humiliate, ridicule, or is otherwise contrary to the inherent dignity and respect of an accused Servicemember is unlawful and undermines the fairness of the military justice system.
- d. *Timely disposition of misconduct.* Commanders are expected to dispose of allegations of misconduct in a timely manner at the lowest appropriate level of disposition. If a commander decides to take action, if any, they should act as soon as they have all the relevant facts. The military is a transient profession and needless delays detract from the fair administration of justice.
- e. *Fairness of proceedings.* Commanders are expected to ensure that in disposing of misconduct, the proceedings are fair and they consider all known and relevant information. A commander should ensure that neither he or she nor a subordinate intimidates or discourages witnesses, either directly or indirectly, from providing information on behalf of a Servicemember appearing at a court-martial, administrative board, or non-judicial punishment proceeding. To the contrary, commanders must encourage those who possess information, either favorable or unfavorable, to provide that information in order to ensure full and fair adjudication of the misconduct.

CHAPTER 4

Authority to Take Adverse Action

4-1. Withholding and Delegation Policies

Nothing in this regulation should be construed as an attempt to require a certain outcome in any

particular case or class of cases. Each commander shall continue to exercise independent judgment in disposing of allegations of misconduct as they see fit. The Governor and the Commanding General as GCMCAs retain discretion to establish withholding and delegation¹⁹ policies and procedures for units and personnel attached or assigned under MCA jurisdiction.

4-2. Senior Leader Misconduct

Pursuant to R.C.M. 306, the authority to dispose of alleged MCA offenses committed by commissioned officers, warrant officers, sergeants major or chief master sergeants, first sergeants in the grade of E-8, and master sergeants or senior master sergeants is withheld to the Commanding General unless such authority is returned to a lower level commander. The Commanding General may, on a case by case basis, return actions to lower level commanders for disposition at the request of the lower level commander or when the Commanding General determines that such disposition at a lower level is appropriate.

4-3. Limitation of Delegation

Subordinate commanders do not have the authority to impose non-judicial punishment for MCA offenses allegedly committed by commissioned officers, warrant officers, sergeants major or chief master sergeants, first sergeants in the grade of E-8, and master sergeants or senior master sergeants unless such authority is returned IAW paragraph 4-2 above.²⁰

4-4. Delegation to Deputy Adjutant General (DAG)

The Commanding General delegates²¹ to the DAG his or her powers under non-judicial punishment, MCA pursuant to Ark Code Ann §12-60-104. This delegation also applies to the issuance and filing of memoranda of reprimand (administrative reprimands and reprimands issued as part of non-judicial punishment). The delegation of non-judicial punishment authority includes the powers of a “next superior authority” for the purposes of acting on appeals. Further, this delegation includes the power to exercise non-judicial punishment authority over commissioned officers, warrant officers, sergeants major or chief master sergeants, first sergeants in the grade of E-8, and master sergeants or senior master sergeants.

4-5. Reservation of MCA Authority

The Commanding General has reserved authority to dispose of the following offenses under the MCA that are similar to offenses under the Arkansas Criminal Code to SPCMCA's:

- a. Section 834 – Drunken or reckless driving;
- b. Section 845 – Sexual Misconduct; and
- c. Section 846 – Sexual Harassment.

The SPCMCA's may, on a case by case basis, return actions to lower level commanders for disposition at the request of the lower level commander or when he or she determines that such disposition at a lower level is appropriate

¹⁹ Pursuant to Ark Code Ann §12-60-104, the Governor and Commanding General may delegate any authority vested in them under the MCA except convening general courts-martials or approval of a sentence of a dismissal or dishonorable discharge.

²⁰ Pursuant to Ark Code Ann § 12-64-301(d), the Governor or commanding general may, by order or regulation, place limitations on the powers granted by this subchapter with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

²¹ Id at 15.

4-6. Offenses Not Prosecuted under the MCA

Offenses under the Arkansas Criminal Code²² are prosecuted through local law enforcement rather than the MCA. If a commander receives a report of an offense under the Arkansas Criminal Code being committed, he or she will immediately contact the appropriate civilian law enforcement agency to request an investigation and/or assistance. In the event that there is a crime scene, commanders will take necessary steps to secure the crime scene and witnesses until the arrival of qualified law enforcement personnel.

CHAPTER 5

Victim and Witness Assistance/Special Victims' Counsel

All persons must ensure that victims and witnesses of crime are treated courteously and with respect for their privacy. Interference with personal privacy and property rights will be kept to an absolute minimum. In those cases in which a victim has been subjected to attempted or actual violence, every reasonable effort will be made to minimize further traumatization. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence, or sexual misconduct. Effective victim and witness programs are multidisciplinary and utilize all related military and civilian agencies. For the services of a victim and witness liaison (VWL), contact the Office of the Staff Judge Advocate, ATTN: Chief, Criminal Law, of the respective branch of the Servicemember.

If a victim of a crime committed subject to this code has a special victims' counsel provided at the expense of an appropriate government agency, the special victims' counsel shall be afforded all of the rights and privileges offered to counsel at similar courts of the United States Army and the United States Air Force. A judge advocate certified to practice before military courts is fully certified and qualified to serve as a special victims' counsel for the courts convened under this code, without regard to the judge advocate's licensing state. Any counsel furnished at the expense of the United States Government or the state government shall be qualified to serve as a special victims' counsel under this section and, if qualified, shall be exempt from any fees or additional requirements.²³

CHAPTER 6

Non-Judicial Punishment

6-1. General

All matters relating to the discipline and government of the Arkansas National Guard not otherwise provided for in the MCA or in regulations issued pursuant to the MCA, shall be as prescribed by the customs and usage of the appropriate forces of the United States.²⁴ This regulation is intended to serve as a supplement to Army regulations and Air Force instructions governing the administration of military justice. Arkansas National Guard Army personnel should consult AR 27-10 and the MCM when imposing non-judicial punishment. The Sections below are provided to highlight areas where the MCA differs from the AR 27-10 and MCM.

6-2. Offenses Punishable under Non-Judicial punishment

²² Ark Code Ann §5-1-101, et seq. and such other non-military punitive provisions within the Arkansas Code.

²³ Ark Code Ann §12-64-410(c)(1).

²⁴ Ark Code Ann §12-61-104.

The conduct in question must be misconduct under the punitive articles of the MCA²⁵. The punitive articles are listed in Chapter 8 of this regulation. While the majority of the punitive articles of the MCA are based on previous or current offenses under UCMJ, there are a punitive articles that are unique to the MCA.²⁶

6-3. Authorized Non-Judicial Punishments

Authorized non-judicial punishments under the MCA are different than the punishments listed within the MCM, Part V Non-Judicial Punishment, 5. Punishments. Notwithstanding other guidance from the Commanding General, commanders are authorized to impose the following punishments under non-judicial punishment as authorized by the MCA:

a. **Company Grade Commanders.** In addition to or in lieu of admonition or reprimand, may impose not more than two (2) of the following punishments on enlisted persons of his or her command²⁷:

- (1) *Withhold Privileges* for not more than two (2) consecutive weeks;
- (2) *Restriction*, with or without duty, for not more than two (2) consecutive weeks;
- (3) *Extra Duty* for not more than two (2) consecutive weeks and two (2) hours per day, holidays included;
- (4) *Rank reduction* to the next inferior grade for members in the pay grade of E-4²⁸ or below;
- (5) *Fine or forfeiture in an amount that does not exceed seven (7) days*²⁹ base pay.³⁰

b. **Field Grade Commanders**³¹. In addition to or in lieu of admonition or reprimand, may impose not more than two (2) of the following punishments on enlisted persons in his or her command:

- (1) *Withhold Privileges* for not more than two (2) consecutive weeks;
- (2) *Restriction*, with or without duty, for not more than two (2) consecutive weeks;
- (3) *Extra Duty* for not more than two (2) consecutive weeks and two (2) hours per day, holidays included;
- (4) *Rank reduction* to the next inferior grade for members in the pay grade of E-6 or below;
- (5) *Fine* or a forfeiture in an amount that does not exceed fifteen (15) days³² base pay.³³

c. **General Officer Commanders**³⁴.

- (1) In addition to or in lieu of admonition or reprimand, may impose not more than two (2) of the following punishments on enlisted persons in his or her command:
 - i. *Withhold Privileges* for not more than two (2) consecutive weeks;
 - ii. *Restriction*, with or without duty, for not more than two (2) consecutive weeks;
 - iii. *Extra Duty* for not more than two (2) consecutive weeks and two (2) hours per day, holidays included;
 - iv. *Rank reduction* to the next inferior grade for members in the pay grade of E-7 or below;

²⁵ Ark Code Ann §12-64-802, et seq.

²⁶ See Ark Code Ann §12-64-847(c) A person subject to this code who wrongfully possesses the metabolites of a controlled substance in his or her blood or urine shall be punished as a court-martial may direct, Ark Code Ann §12-64-845 Sexual Misconduct, and Ark Code Ann §12-64-846 Sexual harassment.

²⁷ See Ark Code Ann §12-64-301(a)(2).

²⁸ Id at 16.

²⁹ Id at 16.

³⁰ Ark Code Ann §12-64-301(a)(2)(F)(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (a)(2)(F) shall not exceed an amount equal to five (5) days of base pay during any calendar month.

³¹ See Ark Code Ann §12-64-301(b)(2).

³² Id at 16.

³³ Ark Code Ann §12-64-301(b)(2)(F)(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (a)(2)(F) shall not exceed an amount equal to fifteen (15) days of base pay during any calendar month.

³⁴ See Ark Code Ann §12-64-301(b)(2). See Section 4-2 above.

- v. *Fine* or a forfeiture in an amount that does not exceed thirty (30) days base pay.³⁵

(2) In addition to or in lieu of admonition or reprimand, may impose not more than two (2) of the following punishments on commissioned officers or warrant officers in his or her command:

- i. *Withhold Privileges* for not more than two (2) consecutive weeks;
- ii. *Restriction*, with or without duty, for not more than two (2) consecutive weeks;
- iii. *Fine* or a forfeiture in an amount that does not exceed thirty (30) days base pay.³⁶

d. *Computation of fines.* In the event a commander orders a reduction in rank and a fine, that fine shall be computed at the reduced rank, even if the reduction in rank is suspended. In order to calculate a single day of pay, the commander will divide the Servicemember's basic pay³⁷, as listed on the most current Military Pay Chart for active duty, by thirty (30).

6-4. Fines and Forfeitures³⁸

See section 7-25 and 7-26 regarding fines and forfeitures and delinquent fines or forfeitures.

6-5. Preparation of Forms

The commander, or his designee if legal personnel are unavailable, shall prepare a notice and record of NJP action on an NGAR Form 2627. This form is slightly different than the DA Form 2627 referenced in the MCM and AR 27-10.

6-6. Right to Request a Court-Martial

An accused may request, but not demand, trial by court-martial in lieu of non-judicial punishment.³⁹ If a court-martial is requested, it will be noted on the NGAR Form 2627. The imposing commander may either:

- a. Decide to take no further action to impose non-judicial punishment for that offense, unless the Servicemember's request is voluntarily withdrawn.
- b. Refer the matter to the next higher level commander by forwarding the NGAR Form 2627, and all allied documents. After reviewing the entire file, the next higher level commander will:
 - (1) Instruct the lower level imposing commander to take no further action to impose non-judicial punishment for that offense, unless the Servicemember's request is voluntarily withdrawn;
 - (2) Refer the matter back down to the lower level imposing commander to continue with the non-judicial punishment proceedings; or
 - (3) Assume jurisdiction over the action under the MCA.

6-7. Transmittal of Non-Judicial Punishment Record and Fine

After a non-judicial punishment is complete, all documents related to the non-judicial punishment, to include the Record of Proceedings under NJP (NGAR 2627), Allied papers (subpoenas, evidence, additional pleadings, fines, payments, and all other relevant documents), Record of Supplemental Action under NJP (NGAR 2627-2) will be forwarded to the Deputy Chief of Staff of Personnel of the respective branch of the Servicemember with a courtesy copy to the Office of the Staff Judge Advocate. The Deputy Chief of Staff of Personnel of the respective branch of the Servicemember, or

³⁵ Ark Code Ann §12-64-301(b)(1)(C)(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (a)(2)(F) shall not exceed an amount equal to fifteen (15) days of base pay during any calendar month.

³⁶ Ark Code Ann §12-64-301(b)(2)(F)(ii) The payment or collection of the fine or the withholding of the forfeiture under this subdivision (a)(2)(F) shall not exceed an amount equal to fifteen (15) days of base pay during any calendar month.

³⁷ Ark Code Ann §12-64-301(f).

³⁸ Ark. Code Ann. § 12-64-609.

³⁹ Ark Code Ann §12-64-301(c).

the personnel section for any command, will not process any non-judicial punishments until approved as legally sufficient by a Judge Advocate assigned or available to the imposing commander's unit.

6-8. Suggested Guide for Conduct of Non-Judicial Punishment Proceedings

Included as Appendix B, is a revised Suggested Guide for Conduct of Non-Judicial Punishment Proceedings. The revised version takes into account the right to request but not demand a court-martial within the MCA non-judicial process.

CHAPTER 7 Courts-Martial

7-1. General

All courts-martial under the MCA shall follow the forms and procedures provided for similar courts of the United States Army and United States Air Force while accounting for the differences in the types of duty status of members of the organized militia; **however, the Governor has executive authority over the military courts of the organized militia and may implement state-specific procedural rules when necessary and practical.**⁴⁰ All matters relating to the discipline and government of the Arkansas National Guard not otherwise provided for in the MCA or in regulations issued pursuant to the MCA, shall be as prescribed by the customs and usage of the appropriate forces of the United States.⁴¹ This regulation is intended to serve as a supplement to Army regulations and Air Force instructions governing the administration of military justice. The Sections below are provided to highlight areas where Arkansas law and the Manual for Courts-Martial ("MCM") are different.

7-2. Statute of Limitations⁴²

- a. A person charged with desertion or absence without leave in time of war or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.
- b. Except as otherwise provided in this section, a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five (5) years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command.
- c. A person charged with an offense is not liable to be punished by non-judicial punishment if the offense was committed more than two (2) years before the imposition of non-judicial punishment.
- d. Periods in which the accused was absent from territory in which the state has authority to apprehend him or her, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

7-3. Maximum Limits

The punishment which a court-martial may direct for an offense may not exceed limits prescribed by the MCA.⁴³

7-4. Authorized Courts-Martial Punishments

Authorized courts-martial punishments under the MCA are different than the punishments listed within the MCM, Rule 1003. Punishments. Courts-martials under the MCA can adjudge the following per specification:

⁴⁰ Ark Code Ann §§12-64-402 and 12-64-508.

⁴¹ Ark Code Ann §12-61-104.

⁴² Ark. Code Ann. § 12-64-501.

⁴³ Ark. Code Ann. § 12-64-602.

- a. **General Court-Martial⁴⁴**: May adjudge one (1) or more of the following punishments:
 - (1) Confinement with hard labor that shall not exceed the lowest sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or three hundred sixty-five (365) days;
 - (2) A fine or forfeiture in an amount that shall not exceed the lowest sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or three hundred sixty-five (365) days of the service member's base pay and allowances;
 - (3) Dishonorable discharge, bad conduct discharge, or dismissal;
 - (4) Reprimand; and
 - (5) Reduction of enlisted persons to a lower grade.
- b. **Special Court-Martial⁴⁵**: May adjudge one (1) or more of the following punishments:
 - (1) Confinement with hard labor that shall not exceed the lowest sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or one hundred eighty (180) days;
 - (2) A fine or forfeiture in an amount that shall not exceed the lowest sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or one hundred eighty (180) days of the service member's base pay and allowances;
 - (3) Bad conduct discharge;
 - (4) Reprimand; and
 - (5) Reduction of enlisted persons to a lower grade.
- c. **Summary Court-Martial⁴⁶**: May adjudge one (1) or more of the following punishments:
 - (1) Confinement with hard labor for not more than thirty (30) days;
 - (2) A fine or forfeiture in an amount that shall not exceed thirty (30) days of the Service member's base pay and allowances;
 - (3) Reprimand; and
 - (4) Reduction of enlisted persons to a lower grade.

7-5. Preparation of Charge Sheet

In preparing charges for trial by court-martial, the commander, or his designee, shall use NGAR Form 458, which shall be prepared in accordance with the MCM. This form is slightly different than the DD Form 458 referenced in the MCM.

7-6. Charges and Specifications

The "charge" indicates the section of the MCA violated. The "specification" states the facts and circumstances which constitute a violation of that section of the MCA. The MCM should be consulted in drafting charges and specifications.

7-7. Preferral and Transmittal of Charges

Any person subject to the MCA may be an accuser and prefer charges against another person subject to the MCA.⁴⁷ The charge must be in writing and signed in the presence of a commissioned officer authorized to administer oaths. All commissioned officers of the organized militia are persons designated to administer oaths for the purpose of military administration and military justice, whether

⁴⁴ Ark. Code Ann. § 12-64-403(1).

⁴⁵ Ark. Code Ann. § 12-64-404 (1).

⁴⁶ Ark. Code Ann. § 12-64-405(c).

⁴⁷ Ark Code Ann §12-64-502.

they are in a duty or non-duty status.⁴⁸ No charges will be preferred unless they have been reviewed by a Judge Advocate.

7-8. Service of Referred Charges⁴⁹

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused, or the defense counsel, a copy of the charges upon which trial is to be held.

7-9. Pretrial Confinement – Notification and Approval

a. *Notification required.* When an accused is ordered into pretrial confinement, whether with or without a warrant, charges MUST be prepared and read to the accused, and the State Judge Advocate must be notified, within 24 hours after confinement begins.

b. *Approval required.* The Adjutant General of Arkansas, or his designee, MUST approve pretrial confinement in excess of 24 hours.

7-10. Pretrial Investigation of Charges Referred to General Court-Martial

No charge may be referred to a General Court-Martial until a preliminary hearing is held in accordance with 10 U.S.C § 832 et seq., as it existed on January 1, 2019, before the referral of charges and specifications.⁵⁰

7-11. Pretrial Advice Required when Charges are Referred to General Court-Martial

a. Before any charge may be referred to trial by a General Court-Martial, the convening authority shall refer it to the State Judge Advocate for consideration and advice.⁵¹

b. The advice of the State Judge Advocate shall be in accordance with §834. Art. 34 of the MCM and R.C.M. 406.

7-12. Military Judge of a General or Special Court-Martial

A military judge shall be detailed to each general and special court-martial.⁵² The military judge shall be detailed by the State Judge Advocate.⁵³

7-13. Detail of Trial Counsel and Defense Counsel

For each general and special court-martial, the authority convening the court shall detail trial counsel and defense counsel.⁵⁴

7-14. Marshals

A military judge of a general and special court-martial and a summary court officer may each appoint by warrant, and at any time remove, one (1) or more marshals. Each marshal shall perform the usual duties of a similarly appointed marshal and shall execute any process, mandate, or order issued by the military judge or the court or officer and perform all acts and duties as authorized by this code to be performed by a sheriff, marshal, or constable.⁵⁵

7-15. Immunity of Court and Officers

No action or proceeding may be prosecuted against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the

⁴⁸ Ark Code Ann §12-64-105.

⁴⁹ Ark Code Ann §12-64-507(a).

⁵⁰ Ark Code Ann §12-64-504.

⁵¹ Ark Code Ann §12-64-505.

⁵² Ark. Code Ann. § 12-64-409.

⁵³ Id.

⁵⁴ Ark. Code Ann. § 12-64-410.

⁵⁵ Ark. Code Ann. § 12-64-412.

approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.⁵⁶

7-16. Sessions – Records of Proceedings⁵⁷

- a. Whenever a general or special court-martial deliberates or votes, only the members of the court may be present.
- b. After a general court-martial has finally voted on the findings, the members of the court may request the military judge and the reporter to put the findings in proper form; and those proceedings shall be on the record.
- c. All other proceedings, including any consultation of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge, if one is assigned to the case.

7-17. Oaths⁵⁸

The military judge, interpreters, and, in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. Each witness before a military court shall be examined on oath or affirmation.

7-18. Obtaining Witnesses and Other Evidence⁵⁹

- a. The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence.
- b. The military judge, the president of a court-martial, or a summary court officer may:
 - (1) Issue a warrant for the arrest of any accused person who, having been served with a warrant and copy of the charges, disobeys a written order by the convening authority to appear before the court;
 - (2) Issue subpoenas for production of evidence and other subpoenas;
 - (3) Enforce by attachment the attendance of witnesses and the production of books and papers; and
 - (4) Sentence for refusal to be sworn or to answer as provided in actions before civil courts of the state.

7-19. Issuance of Process, Subpoenas, Etc.⁶⁰

- a. Military courts may issue all process and mandates necessary to carry into effect the powers vested in those courts.
- b. The courts may issue subpoenas and subpoenas for production of evidence and enforce by attachment attendance of witnesses and production of books and records when the courts are sitting within the state and the witnesses, books, and records sought are also located.
- c. Such process and mandates may be issued by summary courts-martial or the president or military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.
- d. All officers to whom such process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any

⁵⁶ Ark. Code Ann. § 12-64-413.

⁵⁷ Ark. Code Ann. § 12-64-511.

⁵⁸ Ark. Code Ann. § 12-64-514.

⁵⁹ Ark. Code Ann. § 12-64-516.

⁶⁰ Ark. Code Ann. § 12-64-518.

fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

e. Any sheriff, constable, jailer, marshal, or other civil officer named in this code, who shall neglect or refuse to obey, execute, or return the lawful warrant or other process of a military court or make a false return thereon, shall be guilty of a misdemeanor and in addition to the penalties attaching thereto, shall forfeit fifty dollars (\$ 50.00) for each offense or neglect of duty, the money to be recovered in a civil action against the officer and his official sureties by the Attorney General for the benefit of the Arkansas Department of the Military Fund.

7-20. Contempt

a. A military court may punish for contempt any person who uses a menacing word, sign, or gesture in its presence, or who disturbs its proceedings by riot or disorder.⁶¹

b. The punishment may not exceed confinement for thirty (30) days or a fine of five hundred dollars (\$500.00), or both.⁶²

7-21. Sentence of Dismissal or Discharge⁶³

No sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor or the Commanding General of the Arkansas National Guard.

7-22. Effective Date of Sentence

Any sentence of confinement may not be effective or executed until approved by the Commanding General.⁶⁴

7-23. Execution of Confinement⁶⁵

a. A sentence of confinement adjudged by a military court, whether or not the sentence includes a discharge or dismissal and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia or in any jail, penitentiary, or prison designated for that purpose.

b. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

c. The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the Governor, or by such person as he may authorize shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law.

7-24. Execution of Process and Sentence⁶⁶

a. In the organized militia not in federal service, the processes and sentences of its courts-martial when issued may be executed by the civil officers prescribed by the laws of the state.

b. When the sentence of a court-martial adjudges confinement and the reviewing authority has approved the sentence in whole or in part, the reviewing authority or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which the court-martial was held directing the sheriff to take the body of the person so sentenced and

⁶¹ Ark. Code Ann. § 12-64-520.

⁶² Id.

⁶³ Ark. Code Ann. § 12-64-603.

⁶⁴ Ark. Code Ann. § 12-64-604(b)(2).

⁶⁵ Ark. Code Ann. § 12-64-606.

⁶⁶ Ark. Code Ann. § 12-64-607.

confine him in the county jail of the county for the period named in the sentence, as approved, or until he may be directed to release him for proper authority. The confinement shall be carried out as prescribed for confinement in jail by the code of criminal procedure of this state.

7-25. General or Special Court-Martial - Authorized Sentence After Declaration of War Prior to Jurisdiction of UCMJ

A general or special court-martial convened for the trial of a person charged with committing an offense after the declaration of a war or national emergency and before the time when he is brought under the jurisdiction of the United States Uniform Code of Military Justice, 10 U.S.C. § 801 et seq., may, upon conviction, adjudge such punishment as may be appropriate except that it may not exceed that authorized for a similar offense by the United States Uniform Code of Military Justice.⁶⁷

7-26. Fines and Forfeitures⁶⁸

- a. Fines may be paid to a military court or to an officer executing its process.
- b. The amount of a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine and shall be paid over by the officer receiving it in like manner as provided for other fines and moneys collected under a sentence of a summary court-martial.
- c. Notwithstanding any other law, a fine or penalty imposed by a military court upon an officer or enlistee shall be paid by the officer collecting it within thirty (30) days to the Treasurer of State of Arkansas and shall become a part of, be credited to, and be spent from, the Arkansas Department of the Military Fund. The Treasurer of State shall then report the amount thereof to the Adjutant General and shall pay it over in appropriate warrant.
- d. If a punishment of fine or forfeiture of an amount of base pay and allowance is imposed by a court-martial, the amount of the fine or forfeiture shall apply to any type or category of pay and allowances then due or becoming due on or after the date that the punishment is imposed before any deduction, withholding, assignment, previous forfeiture, or collection from the pay and allowances, and to any pay and allowances accrued before that date. When a fine or forfeiture of one hundred percent (100%) of all pay and allowances for a certain period of days is ordered and approved, the accused shall pay no less than three-fourths (3/4) of all pay and allowances received until the amount of one hundred percent (100%) of all pay and allowances for that certain period of days ordered and approved is paid to the military court which imposed the fine.
- e. For traditional Arkansas National Guard Servicemembers, one Military Unit Training Assembly is considered one day base pay. One Active Duty Training day is considered one day base pay.

7-27. Delinquent Fines or Forfeitures⁶⁹

- a. When a fine or forfeiture is delinquent for a period of ninety (90) days or more, the Arkansas Department of the Military shall have a cause of action against the person and property liable for the delinquent portion of the fine or forfeiture, costs of collection, penalties, and interest to which the Department of the Military is entitled, plus a reasonable attorney's fee. The Arkansas Department of the Military shall have a lien on all property subject to forfeiture.
- b. The action shall be brought in the Pulaski County Circuit Court.
- c. The judgment awarded the Arkansas Department of the Military under this section shall be enforceable to the same extent and in the same manner as other civil judgments.

⁶⁷ Ark. Code Ann. § 12-64-608.

⁶⁸ Ark. Code Ann. § 12-64-609.

⁶⁹ Ark. Code Ann. § 12-64-610.

7-28. Initial Action on the Record

After a trial by court-martial, the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the Governor.⁷⁰

7-29. General Court-Martial Records

The convening authority shall refer the record of each general court-martial to the State Judge Advocate, who shall submit his 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.⁷¹

7-30. Reconsideration and Revision⁷²

a. 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.

b.

(1) 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.

(2) In no case, however, may the record be returned:

i. For reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

ii. 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

iii. For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

7-31. Review of Records – Disposition⁷³

In all other cases, review before the convening authority's action will be in accordance with A.C.A. § 12-64-704 and R.C.M. 1106.

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

b.

(1) In all cases not convened by the Governor, if the sentence as approved by the convening authority includes a dishonorable discharge, bad-conduct discharge, or dismissal, whether or not suspended, the entire record shall be sent to a staff judge advocate to be reviewed.

(2) The record and the opinion of the staff judge advocate shall then be sent to the State Judge Advocate for review.

c. All other court-martial records shall be sent to a judge advocate and shall be acted upon, transmitted, and disposed of as prescribed in this regulation.

d.

(1) The State Judge Advocate shall review the record of trial in each case sent to him for review.

(2) The State Judge Advocate shall take final action in any case reviewable by him.

⁷⁰ Ark. Code Ann. § 12-64-701.

⁷¹ Ark. Code Ann. § 12-64-702.

⁷² Ark. Code Ann. § 12-64-703.

⁷³ Ark. Code Ann. § 12-64-704.

(3) In a case reviewable by the State Judge Advocate under this section, the State Judge Advocate may act only with respect to the findings and sentence as approved by the convening authority.

e. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate shall be limited to questions of jurisdiction.

f.

(1) He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved.

(2) In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

g.

(1) If the State Judge Advocate sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing.

(2) If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(3) In a case reviewable by the State Judge Advocate under this section, he shall instruct the convening authority to act in accordance with his decision on the review.

(4) If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

h.

(1) The State Judge Advocate:

i. May order one (1) or more boards of review, each composed of not less than three (3) commissioned officers of the organized militia, each of whom must be a member of the bar of the highest court of the state; and

ii. Shall order a board of review to hear the appeal of any court-martial demanded under §12-64-714.

(2) Each board of review shall review the record of any trial by court-martial referred to it by the State Judge Advocate.

(3) Boards of review have the same authority on review as the State Judge Advocate has under this section.

7-32. Approval by Convening Authority

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 he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.⁷⁴

7-33. Change in Sentence⁷⁵

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

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

⁷⁴ Ark. Code Ann. § 12-64-705.

⁷⁵ Ark. Code Ann. § 12-64-708.

7-34. Review Counsel⁷⁶

The accused has the right to be represented during a review of records under this subchapter by:

- a. Civilian counsel if provided by the accused;
- b. Military counsel of the accused's own selection if reasonably available;
- c. The defense counsel detailed under this code.

7-35. Finality of Proceedings, Findings, and Sentences⁷⁷

a. The proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by the MCA, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required herein, are final and conclusive.

b. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial or appeal as provided within the MCA.

7-36. Petition for a New Trial

At any time within two (2) years after approval by the convening authority of a court-martial sentence which extends to dismissal, dishonorable or bad-conduct discharge, the accused may petition the Governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.⁷⁸

7-37. New Trial – Effect on Sentence⁷⁹

a. 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 such executed part is included in a sentence imposed upon the new trial or rehearing.

b. If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

c.

(1) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed.

(2) The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization.

(3) All times between the dismissal and the reappointment shall be considered as service for all purposes.

7-38. Appeals⁸⁰

a. The convening authority of a general or special court-martial shall detail a military court clerk who shall serve in that role in any appeal prescribed by § 12-64-714.⁸¹

b. When an accused has exhausted all other rights of review within the Arkansas National Guard, the accused may appeal a conviction and sentence of a court-martial that sentences the accused to incarceration to:

⁷⁶ Ark. Code Ann. § 12-64-710.

⁷⁷ Ark. Code Ann. § 12-64-711.

⁷⁸ Ark. Code Ann. § 12-64-712.

⁷⁹ Ark. Code Ann. § 12-64-713.

⁸⁰ Ark. Code Ann. § 12-64-714.

⁸¹ Ark. Code Ann. § 12-64-411.

- (1) The Supreme Court; or,
- (2) If the rules of the Supreme Court provide, to the Court of Appeals.

c. The Arkansas Rules of Appellate Procedure-Criminal shall apply to all appeals to the Supreme Court and Court of Appeals under the MCA.

d. When an accused has exhausted all other rights of review with the Arkansas National Guard, the accused may appeal the conviction and sentence of any court-martial that does not sentence the accused to incarceration to a board of review as provided under Ark Code Ann §12-64-704.

e. The proceedings for an appeal shall be initiated by filing a notice of appeal with the Adjutant General. The notice of appeal shall be served on the Adjutant General personally or by certified mail. It shall be unnecessary to serve other parties. Any appeal shall be filed with the Adjutant General no more than thirty (30) days after the effective date of the sentence under § 12-64-604.

f. The record of any court-martial conviction and sentence appealed shall be lodged in the office of the clerk of the court within the time prescribed by law or court rule for filing an appeal of a criminal conviction in a circuit court in this state, and not thereafter, and only after the party appealing has paid to the Adjutant General the costs for preparation of the transcript and to the court clerk the filing costs, except for pauper as provided for by the appellate court rules.

g. In all cases of appeal to the Supreme Court or Court of Appeals, the appeal shall be taken on the record in the case, consisting of pertinent documents and papers, any transcript of evidence, and the findings and orders. The appellate jurisdiction of the Supreme Court and Court of Appeals shall extend only to questions of law, as in criminal cases appealed from the circuit courts.

h. Upon request of the defendant and a showing of indigency, the State Judge Advocate may appoint an attorney having the qualifications prescribed in § 12-64-410 to represent the defendant in the appeal of his court-martial conviction and sentence to the Supreme Court or Court of Appeals.

i. On an appeal, the state shall be represented by the Attorney General or his designee.

CHAPTER 8

Punitive Sections

8-1. Offenses Defined under the MCA

The sections listed below are offenses punishable under the Military Code of Arkansas.⁸²

a. **Section 802 – Principals**

(1) Any person subject to this code is a principal, if he:

i. Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

ii. Causes an act to be done which if directly performed by him, would be punishable by this code.

b. **Section 803- Accessory after the fact**

(1) Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

c. **Section 804 - Conviction of lesser included offense**

(1) 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.

d. **Section 805 – Attempts**

(1) 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.

⁸² Ark. Code Ann. § 12-64-802, *et. seq.*

(2) 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.

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

e. Section 806 – Conspiracy

(1) Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one (1) or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

f. Section 807 – Solicitation⁸³

(1) Any person subject to this code shall be punished as a court-martial may direct if with the purpose of promoting or facilitating the commission of a specific offense, the person commands, urges, or requests another person to engage in specific conduct that would:

- i.* constitute the offense;
- ii.* constitute an attempt to commit that offense;
- iii.* cause the result specified by the definition of that offense; or
- iv.* establish the other person's complicity in the commission or attempted

commission of that offense.

(2) It is an affirmative defense to a prosecution under this section that the defendant prevented the commission of the offense solicited under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal purpose.

g. Section 808 - Fraudulent or unlawful enlistment, appointment, or separation⁸⁴

(1) Any person shall be punished as a court-martial may direct if he:

- i.* Procures his own enlistment or appointment in the organized militia by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
- ii.* Procures his own separation from the organized militia by knowingly false representation or deliberate concealment as to his eligibility for that separation.

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

h. Section 809 – Desertion

(1) Any member of the organized militia is guilty of desertion if he:

- i.* Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;
- ii.* Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important services; or
- iii.* Without being regularly separated from one (1) of the forces of the organized militia enlists or accepts an appointment in the same or another one of the forces of the organized militia without fully disclosing the fact that he has not been regularly separated.

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

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

⁸³ Ark. Code Ann. § 12-64-807. Solicitation under the MCA is based off the Arkansas Criminal Code of solicitation and not the UCMJ Article 82 definition.

⁸⁴ Ark. Code Ann. § 12-64-808. Fraudulent or unlawful enlistment, appointment, or separation is a combination of UCMJ Article 83, Fraudulent enlistment, appointment, or separation, and Article 84, Effecting unlawful enlistment, appointment, or separation.

i. **Section 810 - Absence without leave**

(1) Any person subject to this code shall be punished as a court-martial may direct if he, without authority:

- i.* Fails to go to his appointed place of duty at the time prescribed;
- ii.* Goes from that place; or
- iii.* Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed.

j. **Section 811 - Missing movement**

(1) Any person subject to this code who through neglect or design misses the movement of a military unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

k. **Section 812 - Contempt towards officials⁸⁵**

(1) Any person subject to this code who uses contemptuous words against the President, the Governor, the General Assembly, or the governor or legislature of any state, territory, commonwealth, or possession wherein that person may be serving shall be punished as a court-martial may direct.

l. **Section 813 - Disrespect towards superior commissioned officer**

(1) Any person subject to this code who behaves with disrespect towards his superior commissioned officer shall be punished as a court-martial may direct.

m. **Section 814 - Assault generally⁸⁶**

(1) A person subject to this code shall be punished as a court-martial may direct if he or she unlawfully and with force or violence.

- i.* Attempts to do bodily harm to another person;
- ii.* Offers to do bodily harm to another person; or
- iii.* Does bodily harm to another person.

n. **Section 815 - Assaulting or willfully disobeying superior commissioned officer**

(1) Any person subject to this code shall be punished as a court-martial may direct if he:

- i.* Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or
- ii.* Willfully disobeys a lawful command of his superior commissioned officer.

o. **Section 816 - Insubordinate conduct towards any noncommissioned officer**

(1) Any enlisted member shall be punished as a court-martial may direct if he:

- i.* Strikes or assaults a noncommissioned officer while that noncommissioned officer is in the execution of his office;
- ii.* Willfully disobeys the lawful order of a noncommissioned officer; or
- iii.* Treats with contempt or is disrespectful in language or deportment towards a noncommissioned officer while that noncommissioned officer is in the execution of his office.

p. **Section 817 - Failure to obey order or regulation⁸⁷**

(1) Any person subject to this code shall be punished as a court-martial may direct if he:

- i.* Violates or fails to obey any lawful order or regulation. A lawful order or regulation is a written, electronic, nonverbal or oral communication by a member of the armed forces acting within the scope of official military duties regarding instruction, decision, rule, judgment, directive, procedure, statement or command, and which primarily affects the action, organization,

⁸⁵ Ark. Code Ann. § 12-64-812 Contempt towards officials does not include the Vice President, Congress, the Secretary of Defense, the Secretary of the Military Department, or the Secretary of Homeland Security which are included in the UCMJ Article 88 Contempt towards officials offense.

⁸⁶ Ark. Code Ann. § 12-64-814 Assault does not include aggravated assault which is included in the UCMJ Article 128 Assault definition.

⁸⁷ Ark. Code Ann. § 12-64-817 Failure to obey order or regulation does state that, "Lawful orders and regulations shall not be subject to the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.,"

training, good order, discipline, property, welfare, administration, operation, and procedure of the armed forces.

ii. Having knowledge of any other lawful order issued by a member of the organized militia, which it is his duty to obey, fails to obey the order or;

iii. Is derelict in the performance of his duties.

q. **Section 818 - Cruelty and maltreatment**

(1) Any person subject to this code who is guilty of cruelty toward or oppression or maltreatment of any person subject to his orders shall be punished as a court-martial may direct.

r. **Section 819 - Mutiny or sedition**

(1) Any person subject to this code is guilty of mutiny if he, with intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance;

(2) Any person subject to this code is guilty of sedition if he, 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;

(3) Any person subject to this code is guilty of a failure to suppress or report a mutiny or sedition if he fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place.

(4) A person 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.

s. **Section 820 - Resistance, break of arrest, and escape⁸⁸**

(1) A person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint, custody, or confinement lawfully imposed shall be punished as a court-martial may direct.

t. **Section 821 - Releasing prisoner without proper authority**

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

u. **Section 822 - Unlawful detention of another**

(1) Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

v. **Section 823 - Noncompliance with procedural rules**

(1) Any person subject to this code shall be punished as a court-martial may direct if he:

i. Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

ii. Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused.

w. **Section 824 - Misbehavior before the enemy**

(1) Any person subject to this code shall be punished as a court-martial may direct if he, before or in the presence of the enemy:

i. Runs away;

ii. Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

iii. Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

iv. Casts away his arms or ammunition;

⁸⁸ Ark. Code Ann. § 12-64-820 Resistance, break of arrest, and escape does not include flight which is included in the UCMJ Article 95 Resistance, flight, breach of arrest, and escape.

- v. Is guilty of cowardly conduct;
- vi. Quits his place of duty to plunder or pillage;
- vii. Causes false arms in any command, unit, or place under control of the armed forces of the United States or the organized militia;
- viii. Willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
- ix. Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle.

x. **Section 825 - Subordinate compelling surrender**⁸⁹

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

y. **Section 826- Improper use of countersign**

(1) Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

z. **Section 827 - Captured or abandoned property**

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

(2) Any person subject to this code shall be punished as a court-martial may direct if he:

- i. Fails to carry out the duties prescribed in subsection (a) of this section;
- ii. Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
- iii. Engages in looting or pillaging.

aa. **Section 828 - Aiding the enemy**

(1) Any person subject to this code shall be punished as a court-martial may direct if he:

- i. Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or
- ii. Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds an intercourse with the enemy, either directly or indirectly.

bb. **Section 829 - Misconduct as a prisoner**

(1) Any person subject to this code shall be punished as a court-martial may direct if he, while in the hands of the enemy in time of war:

- i. For the purpose of securing favorable treatment by his captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of other of whatever nationality held by the enemy as civilian or military prisoners; or
- ii. While in a position of authority over such persons, maltreats them without justifiable cause.

cc. **Section 830 - False official statements**

⁸⁹ Ark. Code Ann. § 12-64-825 uses the term “the commander of any force of the organized militia of this state, or of any other state, ...” whereas the UCMJ Article 100 Subordinate compelling surrender uses the term “the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, ...”

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

dd. Section 831 - Misuse of military property⁹⁰

(1) Any person subject to this code shall be punished as a court-martial may direct if, without proper authority, he:

- i. Sells or otherwise disposes of;
 - ii. Willfully or through neglect damages, destroys, or loses; or
 - iii. Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of
- any military property of the United States or of the state.

ee. Section 832 - Misuse of nonmilitary property⁹¹

(1) Any person subject to this code who, while in a duty status, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct.

ff. Section 833 - Improper hazarding of vessel⁹²

(1) A person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel or vehicle of the armed forces of the United States Armed Forces or of the organized militia shall be punished as a court-martial may direct.

(2) A person subject to this code who negligently hazards or suffers to be hazarded any vessel or vehicle of the armed forces of the United States Armed Forces or of the organized militia shall be punished as a court-martial may direct.

gg. Section 834 - Drunken or reckless driving⁹³

(1) Any person subject to this code who operates any vehicle while under the influence of intoxicants or drugs, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

hh. Section 835 - Misbehavior while at post⁹⁴

(1) Any person subject to this code who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

ii. Section 836 - Dueling or fighting⁹⁵

(1) A person subject to this code who fights, without authority, or promotes, or is concerned in or connives at fighting a duel or dueling, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority shall be punished as a court-martial may direct.

jj. Section 837 - Malingering

(1) Any person subject to this code shall be punished as a court-martial may direct if he, for the purpose of avoiding work, duty, or service in the organized militia:

- i. Feigns illness, physical disablement, mental lapse, or derangement; or
- ii. Intentionally inflicts self-injury.

⁹⁰ Ark. Code Ann. § 12-64-831 covers both state and federal property whereas the UCMJ Article 108 only covers property of the United States.

⁹¹ Ark. Code Ann. § 12-64-832 uses the term “while in a duty status” and includes non-military property of the United States or of the State of Arkansas. UCMJ Article 109 is titled Property other than military property of the United States – waste, spoilage.

⁹² Ark. Code Ann. § 12-64-833 covers vessels of both the Arkansas National Guard and the United States Armed Forces.

⁹³ Ark. Code Ann. § 12-64-834 is limited to “any vehicle” whereas the UCMJ Article 111 is expanded to the drunken or reckless operation of a vehicle, aircraft, or vessel. UCMJ Article 11 is also list the applicable limit the alcohol concentration in a person’s blood.

⁹⁴ Ark. Code Ann. § 12-64-835 is similar to the UCMJ Article 113 Misbehavior of sentinel or lookout offense.

⁹⁵ Ark. Code Ann. § 12-64-836 includes both Dueling and fighting whereas the UCMJ Article 114 only includes Dueling in the title. Ark. Code Ann. § 12-64-836 also includes the language “without authority.”

kk. Section 838 - Riot or breach of peace

(1) Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

ll. Section 839 - Provoking speeches or gestures

(1) Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

mm. Section 840 – Perjury⁹⁶

(1) Any person subject to this code who in a judicial proceeding or in a course of justice conducted under this code 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.

nn. Section 841- Frauds against the government⁹⁷

(1) Any person subject to this code shall, upon conviction, be punished as a court-martial may direct if he:

i. Knowing it to be false or fraudulent makes any claim against the United States, the state or any officer thereof; or presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state or any officer thereof;

ii. For the purpose of obtaining approval, allowance, or payment of any claim against the United States, the state or any officer thereof makes or uses any writing or other paper knowing it to contain any false or fraudulent statements; makes any oath to any fact or to any writing or other paper knowing the oath to be false; or forges or counterfeits any signature upon any writing or other paper or uses any such signature knowing it to be forged or counterfeited;

iii. Having charge, possession, custody, or control of any money or other property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

iv. Being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state.

oo. Section 842 – Stealing property⁹⁸

(1) A person subject to this code who wrongfully and fraudulently takes and carries away or exercises unauthorized control over the property of another with intent to deprive the owner of the property shall be punished as a court-martial may direct.

pp. Section 843 - Conduct unbecoming an officer and a gentleman

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

qq. Section 844 - General article - Offenses cognizable by courts-martial⁹⁹

(1) Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, all conduct of a nature to bring discredit upon the organized militia, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial,

⁹⁶ The UCMJ Article 131 Perjury offense includes, “in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, subscribes any false statement material to the issue or matter of inquiry; is guilty of perjury.”

⁹⁷ Ark. Code Ann. § 12-64-841 includes claims against the United States and the state of Arkansas.

⁹⁸ Ark. Code Ann. § 12-64-842 under the MCA is based off the Arkansas Criminal Code of stealing property and not the UCMJ Article 121 Larceny and wrongful appropriation definition.

⁹⁹ Section (2) of Ark. Code Ann. § 12-64-844 is only found in the MCA.

according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(2) However, cognizance may not be taken and jurisdiction may not be extended to the crimes of murder, manslaughter, rape, larceny and wrongful appropriation for value of over thirty-five dollars (\$35.00), robbery, maiming, sodomy, arson, extortion, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

*rr. Section 845– Sexual misconduct*¹⁰⁰

(1) A person subject to this code who engages in sexual contact with unlawful force, abuse of authority, or violence is guilty of sexual misconduct and shall be punished as a court-martial may direct.

*ss. Section 846 – Sexual harassment*¹⁰¹

(1) A person subject to this code shall be punished as a court-martial may direct if the person:

- i.* (a) Repetitively engages in behavior that involves unwelcome sexual advances;
- ii.* Requests sexual favors from or offers sexual favors to a subordinate; or
- iii.* Engages in other verbal or physical conduct of a sexual nature if:
 1. Submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
 2. Submission to or rejection of the conduct by a person is used as a basis for career or employment decisions affecting that person; or
 3. The conduct has the purpose or effect of unreasonably interfering with a person's work performance or creates an intimidating, hostile, or offensive working environment.

*tt. Section 847 – Use or possession of a controlled substance*¹⁰²

(1) As used in this section, "controlled substance" means:

- i.* Amphetamine;
- ii.* Cocaine;
- iii.* Heroin;
- iv.* Lysergic acid diethylamide;
- v.* Marijuana;
- vi.* Methamphetamine;
- vii.* Opium;
- viii.* Phencyclidine;
- ix.* Barbituric acid, including phenobarbital and secobarbital; or
- x.* Any substance that is included in Schedules I through VI established by the

Controlled Substances Act of 1970, 21 U.S.C. § 812, or the Uniform Controlled Substances Act, § 5-64-101 et seq.

(2) A person subject to this code who wrongfully uses, is under the influence of, or possesses a controlled substance shall be punished as a court-martial may direct.

(3) A person subject to this code who wrongfully possesses the metabolites of a controlled substance in his or her blood or urine shall be punished as a court-martial may direct.

*uu. Section 848– Adultery*¹⁰³

(1) A person subject to this code shall be punished as a court-martial directs if:

- i.* He or she wrongfully engages in the following acts with another person of the same or opposite sex;
- ii.* Genital-to-genital sexual intercourse;

¹⁰⁰ This exact offense is not found within the UCMJ.

¹⁰¹ Sexual Harassment is found within the UCMJ in Article 93 Cruelty and maltreatment.

¹⁰² Ark. Code Ann. § 12-64-847 is similar to UCMJ Article 112a-Wrongful use, possession, etc., of controlled substance except that the wrongful possession of the metabolites of a controlled substance is not a crime under the UCMJ.

¹⁰³ Ark. Code Ann. § 12-64-848.

- iii. Oral-to-genital sexual contact;
- iv. Anal-to-genital sexual contact; or
- v. Oral-to-anal sexual contact;
- vi. At the time the extramarital conduct occurs he or she is married to someone else or knows that the other person is married to someone else;
- vii. Under the circumstances, his or her conduct is to the prejudice of good order and discipline required by a member of the United States Armed Forces or is of a nature that brings discredit upon the United States Armed Forces.

viii.

vv. **Section 849 - Retaliation**¹⁰⁴

(1) A person subject to this code shall be punished as a court-martial may direct if he or she, with the intent to retaliate against a person for reporting or planning to report a criminal offense, or with the intent to discourage any person from reporting a criminal offense:

- i. Wrongfully takes or threatens to take adverse personnel action against any person; or
- ii. Wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person.

ww. **Section 850 - Fraudulent use of credit cards, debit cards, and other access devices.**¹⁰⁵

(1) A person subject to this code shall be punished as a court-martial may direct if the person knowingly and with the intent to defraud obtains anything of value using a:

- i. Stolen credit card, debit card, or other access device;
- ii. Revoked, canceled, or otherwise invalid credit card, debit card, or other access device; or
- iii. Credit card, debit card, or other access device without the authorization of the person authorized to use the credit card, debit card, or other access device.

xx. **Section 851 - Prohibited activities by person in position of special trust.**

(1) An officer, a noncommissioned officer, or a petty officer shall be punished as a court-martial may direct for abuse of a training leadership position if he or she:

- i. Is in a training leadership position with respect to a specially protected junior member of the armed forces; and
- ii. Engages in prohibited sexual activity with the specially protected junior member of the armed forces.

(2) A military recruiter shall be punished as a court-martial may direct for abuse of a position as a military recruiter if he or she engages in prohibited sexual activity with:

- i. An applicant he or she is recruiting to enlist in military service; or
- ii. A specially protected junior member of the armed forces who enlisted under a delayed entry program.
- iii. Consent is not a defense for any prohibited conduct at issue in a prosecution under this section.

8-2. UCMJ Offenses Incorporated by Reference under Section 844 of the MCA

Offenses stated in the MCM under Article 134- General article, that do not fall under the Arkansas Criminal Code, are hereby recognized as disorders and neglects to the prejudice of good order and discipline in the organized militia, and as conduct of a nature to bring discredit upon the organized militia, and as crimes and offenses not capital, and of which persons subject to this code may be guilty, and which offenses shall be taken cognizance of by a general, special, or summary court-

¹⁰⁴ This exact offense is not found within the UCMJ.

¹⁰⁵ This exact offense is not found within the UCMJ.

martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court in accordance with the penalties prescribed by the MCA.

CHAPTER 9

Supervision of Military Justice

9-1. State Judge Advocate

The Office of the Staff Judge Advocate, Arkansas National Guard, is the consolidated legal center for the Arkansas National Guard GCM jurisdiction. All Command Judge Advocate's offices within the Arkansas Army National Guard are separately located, but the Army personnel assigned to that office fall within the technical supervision of the Arkansas National Guard State Judge Advocate and the Air personnel fall under their Air Staff Judge Advocate. The State Judge Advocate has primary responsibility for the assignment, training, management, education, professional development, and proper utilization of all legal personnel within the Arkansas Army National Guard. This applies to all judge advocates (27A), civilian attorneys, legal administrators (27A), paralegal specialists (27D), paralegal NCOs (27D), civilian paralegals and legal assistants, and court reporters (27DC5), regardless of table of organization and equipment (TOE) and table of distribution and allowances (TDA). The Arkansas Army National Guard Senior Paralegal NCO is responsible for all training required and performed by military paralegals and court-reporters within their organization.

9-2. Communication with Servicing Judge Advocate

Direct communication with their servicing Judge Advocate by all commanders and their representatives is highly encouraged. Before disciplinary action is initiated by commanders, they should consult with their designated unit trial counsel to ensure that the contemplated action is in proper form and substantiated by the available evidence.

9-3. Officers Appointed as Summary Courts-Martial (SCM) Officer

Officers will contact their servicing Judge Advocate for advice concerning their duties within 24 hours after notification of appointment or receipt of the appointment memorandum, whichever is sooner. The SCMCA will provide the SCM officers with a complete case file, to include charge sheets and all allied papers.

9-4. Supplemental Guidance

The State Judge Advocate may issue supplemental guidance to this regulation as he or she deems necessary for the administration of military justice so long as it does not involve exercising specific authority granted to the Governor or Commanding General under the MCA that has not been expressly delegated to the State Judge Advocate. A summary of supplemental guidance will be listed in Appendix C of this regulation.

Chapter 10 Trial Defense Service

Non-Judicial Punishment, MCA, Counseling

Every Servicemember considered for non-judicial punishment under the MCA (other than summarized proceedings), has the right to consult with an attorney. If this right is freely and voluntarily waived, consultation is not mandatory. Servicemembers referred to TDS should be provided one legible copy of the NGA Form 2627 (Record of Proceedings Under NJP, MCA) and all available evidence and supporting documentation. Commanders are responsible for providing the Servicemember with evidence as is reasonably available, at a minimum, sufficient evidence to inform the attorney and Servicemember of the nature and source of evidence supporting the action.

Chapter 11

Required Military Justice Reports

Each Court Martial Convening Authority will provide their servicing Judge Advocate Office with a completed military justice report for that court-martial jurisdiction NLT 7 duty days prior to the last duty day of the reporting month. The report will include for each military justice action taken:

- a. Unit, rank, and name of the Servicemember;
- b. MCA offensives committed;
- c. Amount of punishment imposed;
- d. Amount of punishment suspended, if any.

APPENDIX A • Required References

Section I Publications

Manual for Courts-Martial United States (2019 Edition)

AR 27-10 Military Justice (1 January 2019)

AFI 51-202, Nonjudicial Punishment (6 March 2019)

AFI 51-201, Administration of Military Justice (18 January 2019)

DA Pam 27-7 Guide for Summary Court-Martial Trial Procedure (2 April 2014)

DA Pam 27-17 Procedural Guide for Article 32 Preliminary Hearings Officer (18 June 2015)

Section II Forms

NGAR Form 2627-1 Record of Proceedings Under Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 2627-2 Record of Supplementary Action Under Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 2627-3 Waiver of Forty-Eight (48) Hour Decision Period, Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 2627-4 Company Grade Worksheet, Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 2627-5 Field Grade Worksheet, Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 2627-6A General Officer Worksheet, Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 2627-6B General Officer Worksheet, Non-Judicial Punishment, Military Code of Arkansas

NGAR Form 458 - Charge Sheet

NGAR Form 5111 - Summary Court-Martial Rights Notification/Waiver Statement

NGAR Form 2329 - Record of Trial by Summary Court-Martial

NGAR Form 4430 -Report of Result of Trial

NGAR Military Warrant

NGAR Military Subpoena

NGAR Military Subpoena Duces Tecum

NGAR Commitment Order

NGAR Fine Payment Order

APPENDIX B • Suggested Guide for Conducting a Non-Judicial Punishment Proceedings – Arkansas Army National Guard

This guide is designed to ensure that the proceedings comply with all legal requirements. It contemplates a three-step process conducted in the presence of the Soldier, consisting of the following: (1) notification, (2) hearing (that may be omitted if the Soldier admits guilt), and (3) imposition of punishment (if the findings result in determination of guilt).

I. Notification-Statement of Commanding officer:

CO: As your commander, I have disciplinary powers under non-judicial punishment of the Military Code of Arkansas (MCA). I have received a report that you violated the MCA, and I am considering imposing non-judicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings I will use NGAR Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the UCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

Note: Wait for the Soldier to read items 1 and 2 of NGAR Form 2627. Allow him or her to retain a photocopy of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it.

CO: Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

SM Response: (YES) or (NO)

NOTE: If the member does not understand the offense(s), explain the offense(s) to him/her.

CO: Do you understand item 2? Do you have any questions about your rights in these proceedings?

SM Response: (YES) (NO)

NOTE: If the Soldier does not understand his or her rights, explain them in greater detail. If the member asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources: UCMJ, Art. 15; Part V, MCM, 2012; or contact the JA office.

CO: There are some decisions you have to make—

- 1) You have to decide whether you want to request trial by court-martial. If you request a court-martial these proceedings will stop. I then will have to decide whether to:
 - a. Decide to take no further action to impose non-judicial punishment; or
 - b. Refer the matter to the next higher level commander. The next higher level commander may either:

- i. Instruct the lower level imposing commander to take no further action to impose non-judicial punishment for that offense;
 - ii. Refer the matter back down to the lower level imposing commander to continue with the non-judicial punishment proceedings.
 - iii. Assume jurisdiction over the action under the MCA.
 - c. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the Government.
- 2) If you do not request trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation. Your decision not to request trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence on your behalf.
 - a. Evidence in defense is facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.
 - b. Evidence in extenuation is circumstances surrounding the offense showing that the offense was not very serious.
 - c. Evidence in mitigation is facts about you showing that you are a good Soldier and that you deserve light punishment.
- 3) You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.
- 4) Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

SM Response: (YES) (NO)

CO:

- 1) If you do not request trial by court-martial and after you have presented your evidence, I am convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you would be (punishment). **(See Section 6-3, above, for maximum punishments.)**
- 2) You should compare this punishment with the punishment you could receive in a court-martial. (If the Soldier requests to be informed of the maximum court-martial sentence you may state the following: The maximum sentence you could receive in a court-martial would be (punishment). **(See Section 7-7 above, for the maximum punishments.)**)

NOTE: CO should NOT inform the Soldier of the particular punishment you may consider imposing until all evidence has been considered.

- 3) As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is located at (location). Would you like to talk to an attorney before you make your decisions?

SM Response: (YES) (NO)

NOTE: If the Soldier desires to talk to an attorney, arrange for the Soldier to consult an attorney. The Soldier should be encouraged to consult the attorney promptly. Inform the Soldier that consultation with an attorney may be by telephone. The Soldier should be advised that he or she is to notify you if any difficulty is encountered in consulting an attorney.

CO: You now have ____ hours (**Note:** try to give at least 48 hours) to think about what you should do in this case. You may advise me of your decision at any time within the ____ hour period. If you do not make a timely demand for trial or if you refuse to sign that part of NGAR Form 2627 indicating your decision on these matters, I can continue with these non-judicial punishment proceedings even without your consent. You are dismissed.

Note. At this point, the proceedings should be recessed unless the Soldier affirmatively indicates that he or she has made a decision and does not want additional time or to consult with an attorney. If the Soldier does not want additional time or to consult with an attorney, document this choice with an appropriate waive form.

In the event the Soldier does not make a decision within the specified time or refuses to complete or sign item 3 of NGAR Form 2627, see paragraph 3–18f of AR 27-10. When you resume the proceedings, begin at item 3, NGAR Form 2627.

II. Resumption of the Proceedings (Begin at item 3, NGAR Form 2627):

CO: Do you request a trial by court-martial?

SM Response: (YES) (NO)

IF MEMBER REQUEST TRIAL BY COURT MARTIAL:

CO: Initial block a, sign and date item 3. Because you have requested a trial by court-martial, these proceedings will stop. I now must decide whether to take no further action to impose non-judicial punishment, initiate court-martial proceedings against you or refer the matter to the next higher commander. I will notify you when I have reached a decision. You are dismissed.

IF MEMBER DOES NOT REQUEST TRIAL BY COURT MARTIAL:

CO: An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated Soldiers of the chain of command, available witnesses, and a spokesperson, if designated, will be present. Do you request an open hearing?

SM Response: (YES) (NO)

CO: Do you wish to be accompanied by a spokesperson?

SM Response: (YES) (NO)

CO: Initial block 3b(1) and (2) indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

SM Response: (YES) (NO)

CO: Now initial block 3b(3) indicating your decision, and sign and date the form in the space provided under that item.

NOTE:

- i. Wait until the Soldier initials the blocks and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.
- ii. If the answer regarding witnesses and evidence is yes and the Soldier is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier, and destroy all copies of DA Form. If you are convinced that the Soldier committed the offense(s) beyond a reasonable doubt and deserves to be punished, proceed to impose punishment.
- iii. If the Soldier needs additional time to gather his or her evidence, give the Soldier a reasonable period of time to gather the evidence. Tell the Soldier when the proceedings will resume and recess the proceedings.
- iv. If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the Soldier's evidence. Ensure that the Soldier has the opportunity he or she deserves to present any evidence. Ask the Soldier, "Do you have any further evidence to present?" "If the evidence persuades you that you should not punish the Soldier, terminate the proceedings, inform the Soldier of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the Soldier committed the offense(s) and deserves to be punished, impose punishment.

III. Imposition of Punishment:

CO: I have considered all the evidence. I am convinced that you committed the offense(s). I impose the following punishments: (**Note:** announce punishment).

NOTE: After you have imposed punishment, complete items 4, 5, and 6 of NGAR Form 2627 and sign the blank below item

NOTE: For Soldiers in the Grade of E5 and Above:

CO: I am directing that the original NGAR Form 2627 be filed in the (Performance) (Restricted) fiche of your Official Military Personnel file. In making this determination, I have considered your age grade, and total service with particular attention to your recent performance and the fact that this filing decision is not subject to direct appeal. I have also considered that records of non-judicial punishment for first offense(s) are not ordinarily placed in the performance fiche of the OMPF unless they indicate either: a pattern of misconduct, a serious character deficiency, or a substantial breach of military discipline. (CC should initial appropriate block in item 5).

III. Appellate Advice:

CO: (Note: The CO will hand the NGAR Form 2627 to the Soldier) Read item 4, which lists the punishment I have just imposed on you. Now read item 6, which points out that you have a right to appeal this punishment to (title and organization of next superior authority). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (correctional custody, restriction or extra duty), at your request, will be interrupted pending the decision on the appeal. Do you understand your right to appeal?

SM Response: (YES) (NO)

CO: Do you desire to appeal?

SM Response: (YES) (NO)

NOTE: If the answer is no, continue as follows:

CO: If you do not want to appeal, initial block "a" in item 7 and sign the blank below item 7.

NOTE: Now give the member detailed orders as to how you want him to carry out his punishments.

CO: You are dismissed.

NOTE: If the accused appeals any punishment, you must defer the execution of punishments of confinement or extra duty during the appeal. See paragraph 4-4 of *NGAR 27-10*

CO: Do you want to submit any additional matters to be considered in an appeal??

SM Response: (YES) (NO)

NOTE TO CO: If the answer is yes, continue as follows:

CO: If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by (specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initialing the box and signing the blank below. After you complete item 7, I will send the NGAR Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). You are dismissed.

NOTE TO CO: If the answer is No, continue as follows

CO: Initial block "b" in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

APPENDIX C • Summary of Supplemental Guidance

NGAR 27-10
Military Justice

Supplement guidance after 1 September 2015 includes:

- Updated APPENDIX A • Required References, Section II Forms list