

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1279

S. P. 441

In Senate, March 11, 1971

Referred to Committee on State Government. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Johnson of Somerset.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Adopt a State of Maine Code of Military Justice.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 25, c. 141, additional. Title 25 of the Revised Statutes is amended by adding a new chapter 141 to read as follows:

CHAPTER 141

MAINE CODE OF MILITARY JUSTICE

§ 1301. Name

This chapter shall be known as the "Maine Code of Military Justice."

§ 1302. Definitions

As used in this code, unless the context otherwise requires:

1. Accuser. "Accuser" shall mean a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn by another, and any other person who has interest other than an official interest in the prosecution of the accused.

2. Code. "Code" shall mean this chapter.

3. Enlisted person. "Enlisted person" shall mean any person who is serving in an enlisted grade in any military force.

4. Military forces. "Military forces" shall mean the militia of the State of Maine, which includes the National Guard, the State Guard, the Naval Militia, other organized militia units and the unorganized militia, when called into active service of this State.

5. **Military judge.** "Military judge" shall mean an official of a court-martial detailed in accordance with section 1320.

6. **Officer.** "Officer" shall mean a commissioned or warrant officer.

7. **Superior officer.** "Superior officer" shall mean an officer superior in rank or command.

§ 1303. Persons subject to code

The following persons are subject to this code: All members of the military forces of Maine not in active service of the United States and who are under orders to be in the active service of the State.

§ 1304. Fraudulent discharge

All persons discharged from the military forces of Maine subsequently charged with having fraudulently obtained such discharge shall be subject to trial by court-martial on such charge and shall after apprehension be subject to this code while in the custody of the military forces for such trial. Upon conviction of such charge they shall be subject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.

Any person who has deserted from the military forces shall not be relieved from amenability to the jurisdiction of this code by virtue of a separation from any subsequent period of service.

§ 1305. Places where applicable

This code shall be applicable in all places where military forces are present with any personnel who are on orders to be in the active service of the State.

§ 1306. State judge advocate

The Adjutant General shall appoint as state judge advocate one of the judge advocates from the National Guard.

§ 1307. Custody of persons

Apprehension is the taking into custody of a person.

Any person authorized under regulations governing the military forces to apprehend persons subject to this code or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the persons apprehended committed it.

All officers, warrant officers and noncommissioned officers shall have authority to quell all quarrels, frays and disorders among persons subject to this code and to apprehend persons subject to this code who take part in the same.

§ 1308. Apprehension.

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the State of Maine summarily to apprehend a deserter from the Maine National Guard or a member of the military forces ab-

sent without leave and deliver him into the custody of the Maine National Guard.

§ 1309. Arrest

Arrest is the restraint of a person by an order not imposed as a punishment for an offense directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

An officer or warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

No person shall be ordered into arrest or confinement except for probable cause.

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

§ 1310. Accused must be informed of charges

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

§ 1311. Confinement

Confinement and imprisonment other than in guard house, whether prior to, during or after trial by a military court, shall be executed in jails, penitentiaries or prisons designated by the Governor or by the Adjutant General for that purpose.

§ 1312. Report of persons held

No provost marshal, commander of a guard, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the Governor or Adjutant General under section 1311 shall refuse to receive or keep any prisoner committed to his charge by an officer of the military forces, when the committing officer furnishes a statement signed by him, of the offense charged against the prisoner.

Every commander of a guard, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the Governor or the Adjutant General under section 1311 to whose charge a prisoner is committed

shall, within 24 hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him and the name of the person who ordered or authorized commitment.

§ 1313. Application of U. S. Manual for Courts-Martial

Insofar as it is not inconsistent with this code, the U. S. Manual for Courts-Martial as established as of the effective date of this code by executive order of the President of the United States shall be in force and effect and apply to the military forces of Maine.

§ 1314. Nonjudicial punishment

1. Limitations. Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, but punishment may not be imposed upon any member of the military forces under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder.

2. Additional disciplinary punishment. Subject to subsection 1, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

A. Upon officers of his command:

- (1) Restriction to certain specified limits, with or without suspension from duty, for not more than 10 consecutive days; or
- (2) If imposed by a general officer in command, arrest in quarters for not more than 14 consecutive days; forfeiture of not more than $\frac{1}{2}$ of one month's pay per month for 2 months; restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than $\frac{1}{2}$ of one month's pay per month for 3 months; and

B. Upon other personnel of his command:

- (1) Correctional custody for not more than 7 consecutive days;
- (2) Forfeiture of not more than 7 days' pay;
- (3) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
- (4) Extra duties, including fatigue or other duties, for not more than 10 consecutive days;

(5) Restriction to certain specified limits, with or without suspension from duty, for not more than 10 consecutive days;

(6) Detention of not more than 14 days' pay; or

(7) If imposed by an officer of the grade of major or above, correctional custody for not more than 14 consecutive days; forfeiture of not more than $\frac{1}{2}$ of one month's pay per month for 2 months; reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades; extra duties, including fatigue or other duties, for not more than 14 consecutive days; restrictions to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days; or detention of not more than $\frac{1}{2}$ of one month's pay per month for three months.

Detention of pay shall be for a stated period but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No 2 or more of the punishments of arrest in quarters, correctional custody, extra duties and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, correctional custody is the physical restraint of a person during duty or non duty hours and may include extra duties, fatigue duties or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

3. — punishments authorized. An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection 2, paragraph B as the Governor may specifically prescribe by regulation.

4. Suspend; remit. The officer who imposes the punishment authorized in subsection 2, or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection 2, whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating:

A. Arrest in quarters to restriction; or

B. Extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated.

When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

5. Appeal. A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection 4 by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- A. Arrest in quarters for more than 7 days;
- B. Correctional custody for more than 7 days;
- C. Forfeiture of more than 7 days' pay;
- D. Reduction of one or more pay grades from the 4th or a higher pay grade;
- E. Extra duties for more than 10 days;
- F. Restriction for more than 10 days; or
- G. Detention of more than 14 days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection 2.

6. Serious crime. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

7. Records. The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may prescribe that certain categories of those proceedings shall be in writing.

8. Days interpreted. Any punishment authorized by this section which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean consecutive active service days.

§ 1315. Court-martial

There shall be a court-martial which shall consist of a military judge and not less than 3 members or only a military judge, if before the court is as-

sembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.

§ 1316. Sentences

A court-martial as defined in this code shall have jurisdiction to try persons subject to this code for any offense defined and made punishable by this code and may, under such limitations and regulations as the Governor may prescribe, adjudge any of the following penalties:

1. Confinement at hard labor for not more than 6 months;
2. Hard labor without confinement for not more than 3 months;
3. Forfeiture or detentions of pay not exceeding $\frac{2}{3}$ pay per month for 6 months;
4. Dismissal;
5. Bad conduct discharge;
6. Dishonorable discharge;
7. Reprimand; or
8. Reduction of noncommissioned officers to the ranks; and to combine any 2 or more of such punishments in the sentence imposed.

§ 1317. Jurisdiction

The jurisdiction of a court-martial is limited to trial of persons accused of military offenses as described in this code. Persons subject to this code who are accused of offenses cognizable by the civil courts of this State or any other state where the military forces are present in that state may, upon accusation, be promptly surrendered to civil authorities for disposition, urgencies of the service considered. If the person subject to this code is accused of both a military offense under this code and a civil offense by the civil authorities, he shall be released to the civil authorities if the crime for which he is accused by the civil authorities carries a penalty in excess of the maximum penalty provided by this code.

§ 1318. Who may convene a court-martial

A court-martial may be convened by the Governor of Maine or the Adjutant General.

§ 1319. Composition of court-martial

1. **Commissioned officer.** Any commissioned officer is eligible to serve on any court-martial for the trial of any person who may lawfully be brought before such court for trial.
2. **Warrant officer.** Any warrant officer is eligible to serve on a court-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such court for trial.

3. Enlisted member. Any enlisted member, who is not a member of the same unit as the accused, is eligible to serve on a court-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such court for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused may not be tried by a court-martial the membership of which does not include enlisted members in a number comprising at least $\frac{1}{3}$ of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the assembling authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

In this section, the word unit means any regularly organized body as defined by the Governor, but in no case may it be a body larger than a company, squadron or body corresponding to one of them.

4. Rank or grade. When it can be avoided, no member of the military forces may be tried by a court-martial any member of which is junior to him in rank or grade.

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

§ 1320. Military judge

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

2. Qualifications. A military judge shall be a commissioned officer of the National Guard or a retired officer of the armed forces of the United States who is a member of the bar of the Supreme Judicial Court of Maine and who is certified to be qualified for such duty by the state judge advocate.

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

4. Duties. A commissioned officer who is certified to be qualified for duty as a military judge of a court-martial may perform such duties only when he is assigned and directly responsible to the Adjutant General and may perform duties of a judicial or nonjudicial nature other than those relating to his duty as a military judge of a court-martial when such duties are assigned to him by or with the approval of the state judge advocate. The military judge of a

court-martial may not consult with the members of the court except in the presence of the accused, trial counsel and defense counsel, nor may he vote with the members of the court.

§ 1321. Counsel

1. Appointment. For each court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge or court member in any case may act later as trial counsel, assistant trial counsel or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

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

A. Must be a judge advocate of the military forces, who is a graduate of an accredited law school and a member of the bar of the State of Maine, or must be a member of the bar of a federal court or of the highest court of a state; and

B. Must be certified as competent to perform such duties by the state judge advocate.

§ 1322. Court reporters

Under such regulations as the Governor may prescribe, the convening authority of a court-martial, military commission or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

§ 1323. Members of court-martial

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

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

3. Military judge. If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical

disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 1324, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

§ 1324. Pretrial procedures

The pretrial and trial procedures before a court-martial shall be in accordance with the procedures set forth in the Uniform Code of Military Justice of the United States, Title 10, United States Code, Chapter 47, for a special court-martial as of the effective date of this code and according to regulations as of the effective date of this code prescribed by the President of the United States as contemplated by such code except as to matters which are specifically covered in this code.

§ 1325. Limitation of charges

A person charged with any offense is not liable to be tried by court-martial or punished under section 1314 if the offense was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction as set forth in this code.

§ 1326. Witnesses

1. **Witnesses.** Any person not subject to this code who:

A. Has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry or any other military court or board or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission or board;

B. Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the district courts of the State of Maine; and

C. Willfully neglects or refuses to appear or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of an offense against the State of Maine.

2. **Offenses.** Any person who commits an offense named in subsection 1 shall be tried on information in a Maine district court and shall, upon conviction thereof, be punished by a fine of not more than \$500 or imprisonment for not more than 6 months, or by both.

3. **Complaint.** The Attorney General of Maine, upon the certification of the facts to him by the military court, commission or board may file a complaint against and prosecute any person violating this section.

4. **Fees.** The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

§ 1327. Prohibited punishment

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

§ 1328. Limits of punishment

The punishment which a court-martial may direct for an offense may not exceed such limits as the Governor may prescribe for that offense or the limits set forth in section 1316, whichever is the lesser.

§ 1329. Application of forfeitures

Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

All other sentences of courts-martial are effective on the date ordered executed.

On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising court-martial jurisdiction over the command to which the accused is currently assigned.

§ 1330. Confinement

Under such instructions as the Governor may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement as provided in section 1311. Persons so confined in a penal or correctional institution not under the control of one of the military forces are subject to the same discipline and treatment as persons confined or committed by the courts of the State of Maine.

§ 1331. Record of trial

After a trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened

the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising court-martial jurisdiction.

§ 1332. State judge advocate opinion

The convening authority shall refer the record of each 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.

§ 1333. Reconsideration

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

2. — errors. Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case may the record be returned:

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

B. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

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

§ 1334. Disapproval of findings in sentence

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

Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceeding, or unless the sentence prescribed for the offense is mandatory.

§ 1335. Approval of findings and sentence

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as 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.

§ 1336. Appeal

Upon petition of the accused, the Maine Supreme Judicial Court shall review the record of any case approved by the convening authority.

The accused has 30 days from the time when he is notified of the approval of his case by the convening authority to petition the Supreme Judicial Court for review.

Upon filing his petition in the Supreme Judicial Court, the accused shall on the same date file a notice of his intention to appeal with the convening authority who shall within 30 days forward the complete transcript of the case to the Supreme Judicial Court.

In any case reviewed by it, the Supreme Judicial Court may act with respect to any of the findings and sentence as approved by the convening authority. The Supreme Judicial Court shall take action only with respect to matters of law.

If the Supreme Judicial Court sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

After it has acted on a case, the Supreme Judicial Court may direct the convening authority to take action in accordance with its decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

§ 1337. Approval of Governor

No court-martial sentence may be executed until approved by the Governor. The Governor shall approve the sentence or such part, amount or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him.

§ 1338. New trial

At any time after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate for a new trial on the ground of newly discovered evidence or fraud on the court. The state judge advocate shall refer the petition to the court-martial which last heard the case which shall review the petition and the record and report to the convening authority its recommendation for grant or denial of new trial. If a new trial is recommended, the convening authority shall order a rehearing as provided in section 1334. Upon filing of the petition for new trial, any proceedings pending upon appeal or review of sentence shall be dismissed.

§ 1339. Restoration of rights

All rights, privileges and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

§ 1340. Included offenses

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

§ 1341. Attempts

An act done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

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.

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

§ 1342. Conspiracy

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

§ 1343. Absent without leave

1. Desertion; member. Any member of the military forces who:

A. Without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently; or

B. Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service is guilty of desertion.

2. — commissioned officer. Any commissioned officer of the military forces 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. Punishment. Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

§ 1344. Failure to go to place of duty

Any member of the military forces who, without authority, fails to go to his appointed place of duty at the time prescribed; or goes from that place; or absents himself or remains absent from his unit, organization or place of

duty at which he is required to be at the time prescribed, shall be punished as a court-martial may direct.

§ 1345. Missing movement

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

§ 1346. Disrespect to officer

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

§ 1347. Striking officer

Any person subject to this code who 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 willfully disobeys a lawful command of his superior commissioned officer shall be punished as a court-martial may direct.

§ 1348. Striking noncommissioned officer

Any warrant officer or enlisted member who strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office, willfully disobeys the lawful order of a warrant officer or noncommissioned officer, or treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office shall be punished as a court-martial may direct.

§ 1349. Failure to obey order

Any person subject to this code who violates or fails to obey any lawful general order or regulation, or having knowledge of any other lawful order issued by a member of the military forces, which it is his duty to obey, fails to obey the order, or is derelict in the performance of his duties, shall be punished as a court-martial may direct.

§ 1350. Mutiny

1. Mutiny. Any person subject to this code who:

A. With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

B. With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority is guilty of sedition; or

C. 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, is guilty of a failure to suppress or report a mutiny or sedition.

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

§ 1351. Breaking arrest

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

§ 1352. Under influence of alcohol or drugs on duty

Any person subject to this code who is found under the influence of alcoholic liquor or any drug while on duty shall be punished as a court-martial may direct.

§ 1353. Sentinels

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

§ 1354. Feigning illness to avoid duty

Any person subject to this code who for the purpose of avoiding work, duty or service feigns illness, physical disablement, mental lapse or derangement or intentionally inflicts self-injury shall be punished as a court-martial may direct.

§ 1355. False testimony

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

Sec. 2. R. S., T. 25, § 803, amended. The first 2 sentences of section 803 of Title 25 of the Revised Statutes are amended to read as follows:

The organization of the National Guard of Maine, including enlistments, appointments, promotions, transfers, discharges, equipment, uniforms, reductions and warrants of noncommissioned officers, instruction and training, armament ~~discipline~~ and elimination and disposition of officers, shall be the same as that which is now or may hereafter be prescribed or provided by the laws and regulations of the United States for the National Guard. The Commander in Chief is authorized, and it shall be his duty, to issue and prescribe from time to time such orders and regulations, and to adopt such other means of administration as shall maintain the prescribed standard of organization and armament ~~and discipline~~.

Sec. 3. R. S., T. 25, §§ 705, 766, 886, 1211 to 1223, 1261 and 1263, repealed.

Sections 705, 766, 886, 1211 to 1223, 1261 and 1263 of Title 25 of the Revised Statutes are repealed.

Sec. 4. R. S., T. 25, § 1262, repealed. Section 1262 of Title 25 of the Revised Statutes, as last amended by chapter 515 of the public laws of 1969, is repealed.

STATEMENT OF FACT

The Code of Military Justice of the United States is presently incorporated by reference in the Maine Statutes as the Maine Code of Military Justice. The purpose of this bill is to set forth the Maine Code of Military Justice in the Maine Statutes.