

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1138

- 03/04/2013 Authored by Newton, Howe and Lesch
- The bill was read for the first time and referred to the Committee on Government Operations
- 03/13/2013 Adoption of Report: Pass and re-referred to the Committee on Judiciary Finance and Policy
- 03/18/2013 Adoption of Report: Pass and re-referred to the Committee on State Government Finance and Veterans Affairs
- 03/20/2013 Adoption of Report: Pass and re-referred to the Committee on Rules and Legislative Administration
- 04/08/2013 Adoption of Report: Pass and Read Second Time
- 04/29/2013 Calendar for the Day
- Read Third Time
- Passed by the House and transmitted to the Senate

1.1 A bill for an act

1.2 relating to the military; updating the Minnesota Code of Military Justice;

1.3 providing clarifying language; amending Minnesota Statutes 2012, sections

1.4 192A.02, subdivision 1; 192A.045, subdivision 3; 192A.095; 192A.10;

1.5 192A.105; 192A.11, subdivision 1; 192A.111; 192A.13; 192A.20; 192A.235,

1.6 subdivision 3; 192A.605; 192A.62; 192A.66; proposing coding for new law in

1.7 Minnesota Statutes, chapter 192A; repealing Minnesota Statutes 2012, sections

1.8 192A.085; 192A.11, subdivisions 2, 3.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2012, section 192A.02, subdivision 1, is amended to read:

1.11 Subdivision 1. **Applicability.** (a) This code applies to all members of the state

1.12 military forces ~~in active service~~ as defined by section 190.05, ~~subdivision 5.~~

1.13 (b) Subject matter jurisdiction is established if a nexus exists between an offense,

1.14 either military or nonmilitary, and the state military force.

1.15 Sec. 2. Minnesota Statutes 2012, section 192A.045, subdivision 3, is amended to read:

1.16 Subd. 3. **Absence without leave.** If any person subject to this code misses a

1.17 movement to, or is absent without official leave from, ~~annual field training or active~~

1.18 ~~state duty~~ any military duty defined under section 190.05, subdivisions 5a and 5b, such

1.19 the person may be apprehended and delivered to the person's commanding officer or the

1.20 officer-in-charge. Apprehension may be made by military police personnel or by any

1.21 licensed peace officer pursuant to a warrant issued by a military judge upon a finding

1.22 of probable cause.

1.23 Sec. 3. [192A.0851] COMMANDING OFFICER'S NONJUDICIAL

1.24 PUNISHMENT.

2.1 (a) Any commander may impose disciplinary punishments for minor offenses
2.2 without the intervention of a court-martial pursuant to this section. The governor, the
2.3 adjutant general, or a general officer in command may delegate the powers under this
2.4 section to a deputy commanding general or assistant adjutant general who is a member of
2.5 the state military forces.

2.6 (b) Any commanding officer may impose upon enlisted members of the officer's
2.7 command:

2.8 (1) an admonition;

2.9 (2) a reprimand;

2.10 (3) the withholding of privileges for not more than six months;

2.11 (4) the forfeiture of not more than seven days' pay;

2.12 (5) a reduction to the next inferior pay grade, if the grade from which demoted
2.13 is within the promotion authority of the officer imposing the reduction or any officer
2.14 subordinate to the one who imposes the reduction;

2.15 (6) extra duties for not more than 14 days, which need not be consecutive; and

2.16 (7) restriction to certain specified limits, with or without suspension from duty, for
2.17 not more than 14 days, which need not be consecutive.

2.18 (c) Any commanding officer of the grade of major or lieutenant colonel or above
2.19 may impose upon enlisted members of the officer's command:

2.20 (1) any punishment authorized in paragraph (b), clauses (1), (2), and (3);

2.21 (2) the forfeiture of not more than one-half of one month's pay per month for two
2.22 months;

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

2.27 (4) extra duties for not more than 45 days, which need not be consecutive; and

2.28 (5) restriction to certain specified limits, with or without suspension from duty, for
2.29 not more than 60 days, which need not be consecutive.

2.30 (d) The governor, the adjutant general, an officer exercising general court-martial
2.31 convening authority, or a general officer in command may impose:

2.32 (1) upon officers of the officer's command:

2.33 (i) any punishment authorized in paragraph (c), clause (1), (2), and (5); and

2.34 (ii) arrest in quarters for not more than 30 days, which need not be consecutive; and

2.35 (2) upon enlisted members of the officer's command, any punishment authorized in
2.36 paragraph (c).

3.1 (e) Whenever any of those punishments are combined to run consecutively, the total
3.2 length of the combined punishment cannot exceed the authorized duration of the longest
3.3 punishment in the combination, and there must be an apportionment of punishments so that
3.4 no single punishment in the combination exceeds its authorized length under this section.

3.5 (f) Prior to the offer of nonjudicial punishment, the commanding officer shall
3.6 determine whether arrest in quarters or restriction shall be considered as punishments.
3.7 Should the commanding officer determine that the punishment options may include arrest
3.8 in quarters or restriction, the accused shall be notified of the right to demand trial by
3.9 court-martial. Should the commanding officer determine that the punishment options will
3.10 not include arrest in quarters or restriction, the accused shall be notified that there is no
3.11 right to trial by courts-marital in lieu of nonjudicial punishment.

3.12 (g) The officer who imposes the punishment, or the successor in command, may, at
3.13 any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and
3.14 restore all rights, privileges, and property affected. The officer also may:

3.15 (1) mitigate reduction in grade to forfeiture of pay;

3.16 (2) mitigate arrest in quarters to restriction; or

3.17 (3) mitigate extra duties to restriction.

3.18 The mitigated punishment shall not be for a greater period than the punishment mitigated.
3.19 When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall
3.20 not be greater than the amount that could have been imposed initially under this section by
3.21 the officer who imposed the punishment mitigated.

3.22 (h) A person punished under this section who considers the punishment unjust
3.23 or disproportionate to the offense may, through the proper channel, appeal to the next
3.24 superior authority within 15 days after the punishment is either announced or sent to the
3.25 accused, as the commander may determine. The appeal shall be promptly forwarded
3.26 and decided, but the person punished may in the meantime be required to undergo the
3.27 punishment adjudged. The superior authority may exercise the same powers with respect
3.28 to the punishment imposed as may be exercised under paragraph (g) by the officer who
3.29 imposed the punishment. Before acting on an appeal from a punishment, the authority that
3.30 is to act on the appeal may refer the case to a judge advocate for consideration and advice.

3.31 (i) The imposition and enforcement of disciplinary punishment under this section for
3.32 any act or omission is not a bar to trial by court-martial or a civilian court of competent
3.33 jurisdiction for a serious crime or offense growing out of the same act or omission and not
3.34 properly punishable under this section. The fact that a disciplinary punishment has been
3.35 enforced may be shown by the accused upon trial and, when so shown, it shall be considered
3.36 in determining the measure of punishment to be adjudged in the event of a finding of guilty.

4.1 (j) Whenever a punishment of forfeiture of pay is imposed under this section, the
 4.2 forfeiture may apply to pay accruing before, on, or after the date that punishment is
 4.3 imposed.

4.4 Regulations may prescribe the form of records to be kept of proceedings under this section
 4.5 and may prescribe that certain categories of those proceedings shall be in writing.

4.6 Sec. 4. Minnesota Statutes 2012, section 192A.095, is amended to read:

4.7 **192A.095 JURISDICTION OF COURTS-MARTIAL IN GENERAL.**

4.8 Each force of the state military forces not in federal active service has court-martial
 4.9 jurisdiction over all persons subject to this code. The exercise of jurisdiction by one
 4.10 force over personnel of another force shall be in accordance with rules prescribed by the
 4.11 governor or the adjutant general.

4.12 Sec. 5. Minnesota Statutes 2012, section 192A.10, is amended to read:

4.13 **192A.10 JURISDICTION OF GENERAL COURTS-MARTIAL.**

4.14 Subject to section 192A.095 general courts-martial have jurisdiction to try persons
 4.15 subject to this code for any offense made punishable by this code and may, under such
 4.16 limitations as the governor or the adjutant general may prescribe, adjudge any ~~of the~~
 4.17 ~~following punishments:~~ punishment not forbidden by this code.

4.18 ~~(1) a reprimand;~~

4.19 ~~(2) confinement for not more than 200 days or a fine of not more than \$200;~~

4.20 ~~(3) forfeiture of not more than 48 days' pay;~~

4.21 ~~(4) dismissal, bad conduct discharge, or dishonorable discharge;~~

4.22 ~~(5) reduction in rank of an enlisted member to any lower enlisted rank including the~~
 4.23 ~~lowest enlisted rank; or~~

4.24 ~~(6) any combination of these punishments.~~

4.25 Sec. 6. Minnesota Statutes 2012, section 192A.105, is amended to read:

4.26 **192A.105 JURISDICTION OF SPECIAL COURTS-MARTIAL.**

4.27 Subject to section 192A.095 special courts-martial have jurisdiction to try persons
 4.28 subject to this code, ~~except commissioned or warrant officers, for any offense for which~~
 4.29 ~~they may be punished under this code. A special court-martial may adjudge the following~~
 4.30 ~~punishments:~~ for any offense made punishable by this code, and may, under such
 4.31 limitations as the governor or the adjutant general may prescribe, adjudge any punishment
 4.32 not forbidden by this code except dishonorable discharge, dismissal, confinement for more

5.1 than 90 days, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay
 5.2 for more than one year.

5.3 (1) ~~a reprimand;~~

5.4 (2) ~~confinement of not more than 90 days or a fine of not more than \$100;~~

5.5 (3) ~~forfeiture of not more than 24 days' pay;~~

5.6 (4) ~~reduction in rank of an enlisted member to any lower enlisted rank including~~
 5.7 ~~the lowest enlisted grade;~~

5.8 (5) ~~a bad conduct discharge; or~~

5.9 (6) ~~any combination of these punishments.~~

5.10 Sec. 7. Minnesota Statutes 2012, section 192A.11, subdivision 1, is amended to read:

5.11 Subdivision 1. ~~**Jurisdictions**~~ **Jurisdiction of summary courts-martial.** (a) Subject
 5.12 to section 192A.095 of this code, summary courts-martial have jurisdiction to try persons
 5.13 subject to this code, ~~except commissioned or warrant officers, for any offense made~~
 5.14 ~~punishable by this code.~~ except for officers, cadets, candidates, and midshipmen, for
 5.15 any offense made punishable by this code under such limitations as the governor or the
 5.16 adjutant general may prescribe.

5.17 (b) No person with respect to whom summary courts-martial have jurisdiction may
 5.18 object thereto. Summary courts-martial may, under such limitations as the governor or the
 5.19 adjutant general may prescribe, adjudge any punishment not forbidden by this code except
 5.20 dismissal, dishonorable or bad-conduct discharge, confinement, restriction to specified
 5.21 limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

5.22 (c) Procedure for summary courts-martial shall conform to the procedure of
 5.23 Department of the Army Pamphlet 27-7 except for authorized punishments which shall
 5.24 conform to the limits prescribed by this code.

5.25 Sec. 8. Minnesota Statutes 2012, section 192A.111, is amended to read:

5.26 **192A.111 MAXIMUM LIMITS.**

5.27 Subdivision 1. **Punishment limits.** The punishment ~~which~~ that a court-martial may
 5.28 direct for an offense may not exceed limits prescribed by this code.

5.29 Subd. 2. **Level of offense.** (a) Subject to paragraphs (b) and (c), all military offenses
 5.30 are misdemeanors, and a sentence of confinement must not exceed 90 days.

5.31 (b) In cases where the civilian authorities decline to prosecute and court-martial
 5.32 jurisdiction is taken pursuant to sections 192A.02, subdivision 3, and 192A.605, the level
 5.33 of offense and punishment a court-martial is authorized is defined by the level of offense
 5.34 and punishments authorized under the statute for the assimilated crime.

6.1 (c) For crimes under sections 192A.54, 192A.545, 192A.59, and 192A.595 with
 6.2 monetary loss of \$1,000 or more, confinement must not exceed ten years. A sentence of
 6.3 confinement for more than one year is a felony offense.

6.4 (d) Any conviction by a summary courts-martial is not a criminal conviction.

6.5 (e) The limits of punishment for violations of the purely military offenses
 6.6 prescribed under this section shall be lesser of the sentences prescribed by the manual for
 6.7 courts-martial of the United States, and the state manual for courts-martial, but in no
 6.8 instance shall any punishment exceed that authorized by this code.

6.9 Sec. 9. Minnesota Statutes 2012, section 192A.13, is amended to read:

6.10 **192A.13 WHO MAY CONVENE GENERAL COURTS-MARTIAL.**

6.11 (a) In the state military forces not in federal active service, general courts-martial
 6.12 may be convened by:

6.13 (1) the governor; or

6.14 (2) the adjutant general.

6.15 (b) The governor or the adjutant general may authorize in writing other general
 6.16 officers in command as additional general courts-martial convening authorities. The
 6.17 authorization terminates no later than the term of the adjutant general or governor making
 6.18 the authorization.

6.19 (c) If a commanding officer or the adjutant general is an accuser, the court shall be
 6.20 convened by superior competent authority and may in any case be convened by a superior
 6.21 authority if considered desirable by that authority.

6.22 Sec. 10. Minnesota Statutes 2012, section 192A.20, is amended to read:

6.23 **192A.20 GOVERNOR MAY PRESCRIBE RULES.**

6.24 The procedure, including modes of proof, in cases before military courts and other
 6.25 military tribunals may be prescribed by the governor or the adjutant general by rules,
 6.26 which shall, so far as the governor or the adjutant general considers practicable, apply the
 6.27 principles of law and the rules of evidence generally recognized in the trial of criminal cases
 6.28 in the courts of the state, but which may not be contrary to or inconsistent with this code.

6.29 Sec. 11. Minnesota Statutes 2012, section 192A.235, subdivision 3, is amended to read:

6.30 Subd. 3. **Three-year limitation.** Except as otherwise provided in subdivision 1, and
 6.31 section 628.26, a person charged with any offense is not liable to be tried by court-martial
 6.32 or punished under section ~~192A.085~~ 192A.0851 if the offense was committed more than
 6.33 three years before the receipt of sworn charges and specifications by an officer exercising

7.1 court-martial jurisdiction over the command or before the imposition of punishment
7.2 under section ~~192A.085~~ 192A.0851.

7.3 Sec. 12. **[192A.34] ERROR OF LAW; LESSER INCLUDED OFFENSES.**

7.4 Subdivision 1. **Error of law.** A finding or sentence of a court-martial may not be
7.5 held incorrect on the ground of an error of law unless the error materially prejudices the
7.6 substantial rights of the accused.

7.7 Subd. 2. **Lesser offense.** Any reviewing authority with the power to approve or
7.8 affirm a finding of guilty may approve or affirm, instead, so much of the finding as
7.9 includes a lesser included offense.

7.10 Sec. 13. **[192A.345] ACTION BY CONVENING AUTHORITY.**

7.11 Subdivision 1. **Reporting findings and sentence.** The findings and sentence
7.12 of a court-martial shall be reported promptly to the convening authority after the
7.13 announcement of the sentence.

7.14 Subd. 2. **Submissions of the accused.** (a) The accused may submit to the convening
7.15 authority matters for consideration by the convening authority with respect to the findings
7.16 and the sentence. Any such submission shall be in writing. Except in a summary
7.17 courts-martial case, such a submission shall be made within 21 days after the accused has
7.18 been given an authenticated record of trial and, if applicable, the recommendation of a
7.19 judge advocate under subdivision 4. In a summary courts-martial case, a submission shall
7.20 be made within 14 days after the sentence is announced.

7.21 (b) If the accused shows that additional time is required for the accused to submit the
7.22 matters, the convening authority or other person taking action under this section, for good
7.23 cause, may extend the applicable period under paragraph (a).

7.24 (c) In a summary courts-martial case, the accused shall be promptly provided a copy
7.25 of the record of trial for use in preparing a submission authorized by paragraph (a).

7.26 (d) The accused may waive the right to make a submission to the convening
7.27 authority under paragraph (a). A waiver must be made in writing and may not be revoked.
7.28 For the purposes of subdivision (3), paragraph (b), the time within which the accused may
7.29 make a submission under this subdivision shall be deemed to have expired upon the
7.30 submission of a waiver to the convening authority.

7.31 Subd. 3. **Action on findings.** (a) The authority under this section to modify the
7.32 findings and sentence of a court-martial is a matter of command prerogative involving the
7.33 sole discretion of the convening authority. If it is impractical for the convening authority

8.1 to act, the convening authority shall forward the case to a person exercising general
8.2 court-martial jurisdiction who may take action under this section.

8.3 (b) Action on the sentence of a court-martial shall be taken by the convening
8.4 authority. The action may be taken only after the consideration of any matters submitted
8.5 by the accused under subdivision 2 or after the time for submitting the matter expires,
8.6 whichever is earlier. The convening authority, in that person's sole discretion may
8.7 approve, disapprove, commute, or suspend the sentence in whole or in part.

8.8 (c) Action on the findings of a court-martial by the convening authority or other
8.9 person acting on the sentence is not required. However, such person, in the person's
8.10 sole discretion may:

8.11 (1) dismiss any charge or specification by setting aside a finding of guilty; or

8.12 (2) change a finding of guilty to a charge or specification to a finding of guilty to an
8.13 offense that is a lesser included offense of the offense stated in the charge or specification.

8.14 Subd. 4. **Judge advocate recommendation.** Before acting under this section on
8.15 any general or special court-martial case in which there is a finding of guilt, the convening
8.16 authority or other person taking action under this section shall obtain and consider the
8.17 written recommendation of a judge advocate. The convening authority shall refer the
8.18 record of trial to the judge advocate, and the judge advocate shall use such record in the
8.19 preparation of the recommendation. The recommendation of the judge advocate shall
8.20 include those matters as may be prescribed by regulation and shall be served on the
8.21 accused, who may submit any matter in response under subdivision 2. Failure to object
8.22 in the response to the recommendation or to any matter attached to the recommendation
8.23 waives the right to object to the recommendation.

8.24 Subd. 5. **Proceedings in revision, rehearing, and reconsideration.** (a) The
8.25 convening authority or other person taking action under this section, in the person's sole
8.26 discretion, may order a proceeding in revision or a rehearing.

8.27 (b) A proceeding in revision may be ordered if there is an apparent error or omission
8.28 in the record or if the record shows improper or inconsistent action by a court-martial with
8.29 respect to the findings or sentence that can be rectified without material prejudice to the
8.30 substantial rights of the accused. In no case, however, may a proceeding in revision:

8.31 (1) reconsider a finding of not guilty of any specification or a ruling that amounts
8.32 to a finding of not guilty;

8.33 (2) reconsider a finding of not guilty of any charge, unless there has been a finding
8.34 of guilty under a specification laid under that charge, which sufficiently alleges a violation
8.35 of this code; or

9.1 (3) increase the severity of the sentence unless the sentence prescribed for the
 9.2 offense in mandatory.

9.3 (c) A rehearing may be ordered by the convening authority or other person taking
 9.4 action under this section if that person disapproves the findings and sentence and states the
 9.5 reasons for disapproval of the findings. If a person disapproves of the findings and sentence
 9.6 and does not order a rehearing, that person shall dismiss the charges. A rehearing as to
 9.7 the findings may not be ordered where there is a lack of sufficient evidence in the record
 9.8 to support the findings. A rehearing as to the sentence may be ordered if the convening
 9.9 authority or other person taking action under this subdivision disapproves the sentence.

9.10 Sec. 14. **[192A.35] WITHDRAWAL OF APPEAL.**

9.11 (a) In each case subject to appellate review under this code, the accused may file
 9.12 with the convening authority a statement expressly withdrawing the right of the accused
 9.13 to an appeal. A withdrawal shall be signed by both the accused and defense counsel and
 9.14 must be filed in accordance with appellate procedures as provided by law.

9.15 (b) The accused may withdraw an appeal at any time in accordance with appellate
 9.16 procedures as provided by law.

9.17 Sec. 15. **[192A.355] APPEAL BY STATE.**

9.18 Subdivision 1. **Appeal.** (a) In a trial by court-martial in which a punitive discharge
 9.19 may be adjudged, the state may appeal the following, other than a finding of not guilty
 9.20 with respect to the charge or specification by the members of the court-martial, or by a
 9.21 judge in a bench trial so long as it is not made in reconsideration:

9.22 (1) an order or ruling of the military judge that terminates the proceedings with
 9.23 respect to a charge or specification;

9.24 (2) an order or ruling that excludes evidence that is substantial proof of a fact
 9.25 material in the proceeding;

9.26 (3) an order or ruling that directs the disclosure of classified information;

9.27 (4) an order or ruling that imposes sanctions for nondisclosure of classified
 9.28 information;

9.29 (5) a refusal of the military judge to issue a protective order sought by the state to
 9.30 prevent the disclosure of classified information; and

9.31 (6) a refusal by the military judge to enforce an order described in clause (5) that has
 9.32 previously been issued by appropriate authority.

9.33 (b) An appeal of an order or ruling may not be taken unless the trial counsel provides
 9.34 the military judge with written notice of appeal from the order or ruling within 72 hours of

10.1 the order or ruling. The notice shall include a certification by the trial counsel that the
10.2 appeal is not taken for the purpose of delay and, if the order or ruling appealed is one
10.3 which excludes evidence, that the evidence excluded is substantial proof of a fact material
10.4 in the proceeding.

10.5 (c) An appeal under this section shall be diligently prosecuted as provided by law.

10.6 Subd. 2. **Appeal forwarded.** An appeal under this section shall be forwarded to the
10.7 court prescribed in section 192A.37. In ruling on an appeal under this section, that court
10.8 may act only with respect to matters of law.

10.9 Subd. 3. **Delay of appeal.** Any period of delay resulting from an appeal under this
10.10 section shall be excluded in deciding any issue regarding denial of a speedy trial unless an
10.11 appropriate authority determines that the appeal was filed solely for the purpose of delay
10.12 with the knowledge that it was totally frivolous and without merit.

10.13 Sec. 16. **[192A.36] REHEARINGS.**

10.14 A rehearing under this code shall take place before a court-martial composed of
10.15 members who were not members of the court-martial that first heard the case. Upon a
10.16 rehearing, the accused may not be tried for any offense of which the accused was found
10.17 not guilty by the first court-martial, and no sentence in excess of or more severe than the
10.18 original sentence may be approved, unless the sentence is based upon a finding of guilty
10.19 of an offense not considered upon the merits in the original proceedings, or unless the
10.20 sentence prescribed for the offense is mandatory. If the sentence approved after the first
10.21 court-martial was in accordance with a pretrial agreement and the accused at the rehearing
10.22 changes a plea with respect to the charges or specifications upon which the pretrial
10.23 agreement was based, or otherwise does not comply with the pretrial agreement, the
10.24 approved sentence as to those charges or specifications may include any punishment not in
10.25 excess of that lawfully adjudged at the first court-martial.

10.26 Sec. 17. **[192A.365] REVIEW BY SENIOR FORCE JUDGE ADVOCATE.**

10.27 Subdivision 1. **Review of findings of guilt.** (a) A general and special court-martial
10.28 case in which there has been a finding of guilty shall be reviewed by the senior force judge
10.29 advocate, or a designee. The senior force judge advocate, or designee, may not review
10.30 a case under this subdivision if that person has acted in the same case as an accuser,
10.31 investigating officer, member of the court, military judge, or counsel or has otherwise
10.32 acted on behalf of the prosecution or defense.

10.33 (b) The senior force judge advocate's review shall be in writing and shall contain
10.34 the following:

- 11.1 (1) conclusions as to whether:
 11.2 (i) the court had jurisdiction over the accused and the offense;
 11.3 (ii) the charge and specification stated an offense; and
 11.4 (iii) the sentence was within the limits prescribed as a matter of law;
 11.5 (2) a response to each allegation of error made in writing by the accused; and
 11.6 (3) if the case is sent for action under subdivision 2, a recommendation as to the
 11.7 appropriate action to be taken and an opinion as to whether corrective action is required
 11.8 as a matter of law.

11.9 Subd. 2. **Action by adjutant general; authorization.** The record of trial and
 11.10 related documents in each case reviewed under subdivision 1 shall be sent for action
 11.11 to the adjutant general if:

- 11.12 (1) the judge advocate who reviewed the case recommends corrective action;
 11.13 (2) the sentence approved under section 192A.345, subdivision 3, extends to
 11.14 dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six
 11.15 months; or
 11.16 (3) the action is otherwise required by regulations of the adjutant general.

11.17 Subd. 3. **Adjutant general action.** (a) The adjutant general may:

- 11.18 (1) disapprove or approve the findings or sentence, in whole or in part;
 11.19 (2) remit, commute, or suspend the sentence in whole or in part;
 11.20 (3) except where the evidence was insufficient at the trial to support the findings,
 11.21 order a rehearing on the findings, on the sentence, or on both; or
 11.22 (4) dismiss the charges.

11.23 (b) If a rehearing is ordered but the convening authority finds a rehearing
 11.24 impracticable, the convening authority shall dismiss the charges.

11.25 Sec. 18. **[192A.37] REVIEW BY STATE APPELLATE AUTHORITY.**

11.26 Decisions of a special or general courts-martial may be appealed to the Minnesota
 11.27 Court of Appeals according to the Minnesota Rules of Criminal and Appellate Procedure.

11.28 Sec. 19. **[192A.375] APPELLATE COUNSEL.**

11.29 Subdivision 1. **Appellate government counsel.** The senior force judge advocate
 11.30 shall detail a judge advocate as appellate government counsel to represent the state in the
 11.31 review or appeal of cases specified in section 192A.37, and before any federal court when
 11.32 requested to do so by the state attorney general. Appellate government counsel must be a
 11.33 member in good standing of the bar of the highest court of the state.

12.1 Subd. 2. **Right to be represented; appeal by state.** (a) Upon an appeal by the
 12.2 state, an accused has the right to be represented by detailed military counsel before any
 12.3 reviewing authority and before any appellate court.

12.4 Subd. 3. **Right to be represented; appeal by accused.** (a) Upon the appeal
 12.5 by an accused, the accused has the right to be represented by military counsel before
 12.6 any reviewing authority.

12.7 (b) Upon the request of an accused entitled to be represented, the senior force judge
 12.8 advocate shall appoint a judge advocate to represent the accused in the review or appeal
 12.9 of cases specified in subdivisions 2 and 3.

12.10 (c) An accused may be represented by civilian appellate counsel at no expense to
 12.11 the state.

12.12 **Sec. 20. [192A.38] FINALITY OF PROCEEDINGS, FINDINGS, AND**
 12.13 **SENTENCES.**

12.14 The appellate review of records of trial provided by this code, the proceedings,
 12.15 findings, and sentences of courts-martial as approved, reviewed, or affirmed as required
 12.16 by this code, and all dismissals and discharges carried into execution under sentences by
 12.17 courts-martial following approval, review, or affirmation as required by this code, are final
 12.18 and conclusive. Orders publishing the proceedings of courts-martial and all action taken
 12.19 pursuant to those proceedings are binding upon all departments, courts, agencies, and
 12.20 officers of the United States and the several states, subject only to action upon a petition
 12.21 for a new trial and to action for remission and suspension.

12.22 **Sec. 21. [192A.566] ILLEGAL PRESENCE OF CONTROLLED SUBSTANCE**
 12.23 **WHILE IN DUTY STATUS.**

12.24 (a) A person subject to this code who, while in any duty status defined in section
 12.25 190.05, subdivision 5, submits to a urinalysis test, the result of which is positive for
 12.26 a controlled substance described in paragraph (b), shall be punished as a court-martial
 12.27 may direct.

12.28 (b) For purposes of this section, "controlled substance" includes the following:

12.29 (1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
 12.30 methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or
 12.31 derivative of any such substance;

12.32 (2) any substance not specified in clause (1) that is listed on a schedule of controlled
 12.33 substances prescribed by the President of the United States for the purposes of the

13.1 Uniform Code of Military Justice of the armed forces of the United States, United States
 13.2 Code, title 10, section 801 et seq.;

13.3 (3) any other substance not specified in clause (1) or contained on a list prescribed by
 13.4 the President of the United States under clause (2) that is listed in schedules I through V of
 13.5 article 202 of the Controlled Substances Act, United States Code, title 21, section 812; and

13.6 (4) any substance defined in sections 152.01 and 152.027, subdivision 6.

13.7 (c) It is an affirmative defense which may be proved by a preponderance of the
 13.8 evidence that the person had a valid prescription for that controlled substance and was
 13.9 using the controlled substance in the manner for which it was prescribed.

13.10 Sec. 22. Minnesota Statutes 2012, section 192A.605, is amended to read:

13.11 **192A.605 GENERAL ARTICLE.**

13.12 Though not specifically mentioned in this code, all disorders and neglects to the
 13.13 prejudice of good order and discipline in the state military forces, ~~and~~ all conduct of a
 13.14 nature to bring discredit upon the state military forces, any crime punishable by the law of
 13.15 this state other than those specifically enumerated in the punitive sections of this code,
 13.16 and any crime contained in the Uniform Code of Military Justice shall be punished as a
 13.17 court-martial may direct. However, where a crime constitutes an offense that violates both
 13.18 this code and the criminal laws of the state where the offense occurs or criminal laws of
 13.19 the United States, jurisdiction of the military court must be determined in accordance with
 13.20 section 192A.02, subdivision 3, paragraph (a).

13.21 Sec. 23. Minnesota Statutes 2012, section 192A.62, is amended to read:

13.22 **192A.62 SECTIONS TO BE EXPLAINED.**

13.23 Sections 192A.02, 192A.025, 192A.045, 192A.065, 192A.07, 192A.08, ~~192A.085~~
 13.24 192A.0851, 192A.155, 192A.205, 192A.385 to 192A.595, and 192A.62 to 192A.63 shall
 13.25 be carefully explained to every enlisted member at the time of the member's enlistment or
 13.26 transfer or induction into, or at the time of the member's order to duty in or with any of the
 13.27 state military forces or within 30 days thereafter. They shall also be explained annually
 13.28 to each unit of the state military forces. A complete text of this code and of the rules
 13.29 prescribed by the governor thereunder shall be made available to any member of the state
 13.30 military forces, upon the member's request, for personal examination. Failure to provide
 13.31 briefings to soldiers or otherwise explain this code to soldiers shall not be a defense to a
 13.32 court-martial proceeding, except as mitigation in sentencing.

14.1 Sec. 24. Minnesota Statutes 2012, section 192A.66, is amended to read:

14.2 **192A.66 DELEGATION OF AUTHORITY BY GOVERNOR.**

14.3 ~~Except for the power in sections 192A.115 and 192A.13,~~ The authority vested in the
14.4 governor under this code may be delegated or subdelegated.

14.5 Sec. 25. **REPEALER.**

14.6 Minnesota Statutes 2012, sections 192A.085; and 192A.11, subdivisions 2 and
14.7 3, are repealed.

192A.085 COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT.

Subdivision 1. **Disciplinary punishments.** Under such rules as the governor may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

- (1) upon an officer of the command:
 - (i) withholding of privileges for not more than two consecutive weeks;
 - (ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or
 - (iii) if imposed by the governor, the commanding officer of a force of the state military forces, or the commanding general of a division, a forfeiture of not more than 15 days pay or a fine in an equivalent amount;
- (2) upon other military personnel of the command:
 - (i) withholding of privileges for not more than two consecutive weeks;
 - (ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;
 - (iii) extra duties for not more than 14 days, which need not be consecutive, holidays included;
 - (iv) reduction to the next inferior grade by the commander with promotion authority or higher command; or
 - (v) forfeiture of not more than four days pay or a fine in an equivalent amount.

Subd. 2. **Governor's limitations.** The governor may, by rule, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

Subd. 3. **Demand for court-martial.** Punishment may not be imposed upon any person subject to this code if such person, before imposition of such punishment, has demanded trial by court-martial in lieu of such punishment.

Subd. 4. **Appeal.** A person punished under this section who considers the 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 shall not in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, the successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. Before acting on an appeal from a punishment of a fine or forfeiture of pay or reduction in grade, the authority who is to act on the appeal shall refer the matter to the authority's judge advocate for advice and counsel.

Subd. 5. **Related serious offenses.** The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial or prosecution by civilian authorities for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section. Whether an offense is serious depends on several factors including, but not limited to, the nature of the offense; the circumstances surrounding its commission; and the defendant's age, rank, duty assignment, records, and experience. If the soldier declines nonjudicial punishment and the matter is referred to trial by summary court-martial, jurisdiction must be determined pursuant to section 192A.02, subdivision 3, paragraph (a). 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.

Subd. 6. **Forfeiture of pay.** Whenever a punishment of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing on or after the date that punishment is imposed and to any pay accrued before that date.

Subd. 7. **Definition.** For purposes of this section, "consecutive" means time on duty as a member of the state military forces not in federal active service.

192A.11 JURISDICTION OF SUMMARY COURTS-MARTIAL.

Subd. 2. **Objection to form.** No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if that person objects thereto, unless under section 192A.085 that person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an

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accused who has not been permitted to refuse punishment under section 192A.085, trial shall be ordered by special or general court-martial, as may be appropriate.

Subd. 3. **Punishment options.** A summary court-martial may adjudge the following punishments:

- (1) a reprimand;
- (2) confinement of not more than 15 days or a fine of not more than \$25;
- (3) forfeiture of not more than 12 days' pay;
- (4) reduction in rank of an enlisted member to any lower enlisted rank including the lowest enlisted grade; or
- (5) any combination of these punishments.