

The Alaska Code of Military Justice

WHAT IT IS, WHY WE NEED IT, AND HOW TO USE IT

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How We Got Here

- The National Guard Bureau's Office of Complex Investigations (OCI) issued a report in Sep 2014.
- The report made several findings and recommendations.
- In regard to Military Justice the report stated the following:
 1. The old Alaska Military Code "lacks teeth." It could not be used for civilian-like offenses that affect the discipline of a unit
 2. No record of an ACMJ court-martial since the old code's inception in 1955
 3. Most common tool used for discipline was administrative
 4. General lack of confidence in the military justice system

3 Tools for Military Discipline

“Discipline is the soul of an Army.” – George Washington

1. Administrative Discipline (Separations, Rank Reduction, Letters of Reprimand)
2. Alaska Criminal Code (Civilian Crimes)
3. Code of Military Justice to include Courts-Martial and Nonjudicial Punishment

House Bill 126 & ACMJ

- In February, 2015, Rep. Gabrielle LeDoux (R) introduced House Bill 126 to establish a Code of Military Justice. HB 126 passed in April of 2016.
 - State House worked closely with the Guard Command and Judge Advocate Corps to draft and revise legislation.
- Based on principles of Military Law arising from the well- established federal Uniform Code of Military Justice (UCMJ).
- Derived from best practices of other states' National Guards and the National Guard Bureau's Model Code.
- Does NOT replace civilian criminal law BUT addresses Military Offenses and civilian-like offenses that affect military good order and discipline

ACMJ Basics

- A code of offenses that applies to the State Military Forces
- Offenses adjudicated through
 - Courts-Martial (General, Special, and Summary)
 - Nonjudicial Punishment (NJP) – Minor Offenses
- Offenses and punishments are stated in the Code
- Provides framework for HOW we can conduct Courts-Martial
- Authorizes Regulation for Nonjudicial Punishment (Called “Article 15’s” in Active Duty). Regulation lays out HOW a commander can NJP a Service Member and Maximum Punishments.



What behavior can be punished under the ACMJ?

1. Military Offenses – Bulk of the Punitive Articles. Examples:

- AWOL
- Drunk on Duty

2. Offenses chargeable in both military and civilian court.

Examples:

- DUI
- Sexual Assault
- **NOTE: Most civilian crimes canNOT be charged under the ACMJ.**

3. Conduct that is “counter to good order and discipline” or “brings discredit upon the service.”

- “Article 134” in Federal UCMJ. Called “Section 634” in ACMJ

Specific Offenses are delineated later in the presentation.

Punishments Authorized

- Courts-Martial:
 - Punitive Discharge:
 - Bad Conduct Discharge (BCD)
 - Dishonorable Discharge (DD)
 - Confinement
 - Maximum of 10 years. Most offenses have maximum of 1 year.
 - Offender imprisoned within Alaska Department of Corrections Facilities
 - Such other punishment “As a Court-Martial may direct...”
- Nonjudicial Punishment
 - Fines/Forfeitures
 - Restrictions
 - Reductions in Rank

Common Military Crimes and Maximum Punishments (1 of 4)

ALL OFFENSES LISTED IN HB 126 IN SECTIONS 26.05.577 to 26.05.634

- Fraudulent Enlistment, Appointment, or Separation – Max 1 year, DD
- Effecting Unlawful Enlistment, Appointment, or Separation – Max 1 year, DD
- Desertion – Max 1 year, DD
- Absence without Leave – Max 1 year, DD
- Missing Movement – Max 1 year, DD
- Contempt towards officials – No confinement, DD
- Disrespect toward superior officer – No confinement, DD
- Assaulting or willfully disobeying superior commissioned officer – 5 years, DD
- Insubordinate conduct towards a warrant officer/NCO – 2 years, DD

Common Military Crimes (2 of 4)

- Failure to obey order or regulation – Max 1 year, DD
- Cruelty and maltreatment – Max 1 year, DD
- Resistance, flight, breach or arrest, escape – Max 1 year, DD
- Unlawful detention – Max 1 year, DD
- False official statement – Max 1 year, DD
- Military property: loss, damage, destruction, or wrongful disposition – Max 1 year, DD
- Other than military property: waste, spoilage or destruction – Max 1 year, DD

Common Military Crimes (3 of 4)

- Improper hazarding of vehicle, aircraft, or vessel – Max 1 year, DD
- Drunk on duty – Max 1 year, DD
- Malingering – Max 1 year, DD
- Riot or breach of peace – Max 1 year
- Provoking speeches or gestures – No confinement, no discharge.
“Punished as a court-martial may direct.”
- Fraud against the government – Max 1 year, DD

Common Military Crimes (4 of 4)

- Conduct unbecoming an officer – No confinement, DD
- General Article – No confinement, DD
 - Any conduct that is prejudicial to good order and discipline; or
 - Conduct of a nature to bring discredit on the militia
 - Examples:
 - Disorderly conduct
 - Gambling with a subordinate
 - Adultery
- **DETAILS ON TERMS AND ELEMENTS OF THESE OFFENSES CAN BE FOUND IN THE FEDERAL MANUAL FOR COURTS MARTIAL.**
- **Download the App, or visit: <http://www.apd.army.mil/pdf/mcm.pdf>**

Concurrent Offenses – Offenses that are both Civilian and Military

- Civilians get the “first bite at the apple,” i.e. Civilian prosecutors have right of first refusal.
- Service Member cannot be prosecuted in Alaska civilian court AND Court-Martialed, due to double jeopardy.
- Need affirmative statement of non-prosecution to proceed to Court-Martial.
- Nonjudicial Punishment does NOT create double jeopardy.

Non-Military Crimes that Impact Military Discipline

- DUI – Max 1 year for first offense, 5 years for third offense, DD for both
- Possession, Use of Controlled Substance – Max 5 years, DD; except Marijuana – No confinement, DD
- Sexual Assault – Max 10 years, DD
- Stalking – Max 3 years, DD
- Other sexual misconduct; indecent viewing; visual recording – Max 1 year, DD
- Larceny or wrongful appropriation – Max 1 year, DD if larceny, BCD if WA
- Forgery – Max 1 year, DD
- Making, drawing, or uttering a check without sufficient funds – Max 1 year, DD
- Perjury – Max 1 year, DD

Who does ACMJ apply to?

Organized Militia

1. Alaska National Guard (Air and Army)
 - Traditional Guard Members
 - AGR
 - Technicians (through their traditional weekend of service)
2. Alaska Naval Militia
3. Alaska State Defense Forces



ACMJ

Does not apply to:

- Civilians
- Title 10 Service Members (UCMJ predominates)

When does ACMJ apply?

- AGR (Title 32) = 24/7, everywhere
- M-Day/DSG = 24/7 within Alaska. Outside if on orders.
- Dual Status Technician = 24/7 within Alaska, because of their drilling status. Outside if on orders.
- Alaska State Defense Forces = 24/7 within Alaska, same as M-Day/DSG. Outside if on orders.
- State Active – 24/7 within Alaska.

When does ACMJ NOT apply?

- Whenever a Service Member of any type is put on Title 10 orders.
- M-Day/DSG = When outside of Alaska and NOT on a duty status. E.g., on a personal trip.
- Dual Status Technician = When outside of Alaska and NOT in a duty status. E.g., on a personal trip.
- Alaska State Defense Forces = When outside of Alaska and NOT on a duty status. E.g., on a personal trip.

Nonjudicial Punishment (NJP): Overview

- Only for MINOR offenses.
- Offenses must fit under one of the categories of offenses listed above, from HB 126.
- Much more common than Court-Martial.
- Commanders at all levels can use NJP, but different max punishments at company, battalion, brigade, and flag/GO level.
- Only commander may issue NJP. Technician's supervisor may NOT issue NJP.
- Commanders may not delegate authority to impose punishments. E.g. Can't delegate to XOs, OICs, NCOICs

NJP: Maximum Punishments (partial list)

Imposed on enlisted

Company Grade Commander:	7 days pay (AGR); 1 UTA pay (Mday) 1 grade reduction (<E5)
Field Grade Commander:	½ month pay (AGR); 4 UTA pay (Mday) 2 grade reduct. (<E5); 1 grade (>E5)
General/Flag Officer/Governor:	½ month pay (AGR); 4 UTA pay (Mday) 2 grade reduct. (<E5); 1 grade (>E5)

Imposed on officers

Company/Field Grade Commanders: Restrictions for 30 days (AGR); Restrictions for 4 UTA (Mday); cannot take pay

General/Flag/Governor: Restrictions; ½ month pay (AGR); 4 UTA's pay (Mday)

Wrapping Up

- Both Court Martial and NJP based on offenses listed in HB 126
- Court Martial is for serious offenses, and creates double jeopardy (if it is the type of offense that violates both military and civilian law).
- NJP is for minor offenses, and does NOT create double jeopardy.
- NEITHER Court Martial nor NJP prevent Administrative Action (GOMAR, Reduction Board, etc.) from going forward simultaneously.
- Service Members have right to be represented by a judge advocate in Court Martial. They have a right to consult with a judge advocate during NJP proceedings, but judge advocate does not represent them before commander.
- **No behavior that is now permitted is forbidden by the ACMJ. No behavior that is now forbidden is permitted by the ACMJ.**

QUESTIONS?

For further questions please contact:
Your servicing Judge Advocate or
The Alaska National Guard Office of the Staff Judge
Advocate at (907) 428-6096

