

GOVERNMENT CODE
CHAPTER 432. TEXAS CODE OF MILITARY JUSTICE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 432.001. DEFINITIONS. In this chapter:

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

(2) "Active state duty" means duty authorized under the constitution and laws of the state and all training authorized under Title 32, United States Code.

(3) "Commanding officer" includes commissioned officers and warrant officers, as applicable.

(4) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding temporarily, or a successor in command.

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

(6) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(7) "Judge advocate" means a commissioned officer appointed to serve as a judge advocate by the adjutant general under Section 432.005(b).

(8) "Legal officer" means a commissioned officer of the state military forces designated to perform legal duties for a command.

(9) "Military" refers to all or part of the state military forces.

(10) "Military court" means a court-martial, court of inquiry, military commission, or provost court.

(11) "Military judge" means an official of a court-martial detailed in accordance with Section 432.045.

(12) "Officer" means a commissioned or warrant officer.

(13) "Officer candidate" means a cadet of the state officer candidate school.

(14) "Rank" means the order of precedence among members of the state military forces.

(15) "State judge advocate general" means the judge advocate general of the state military forces, commissioned in those forces, and responsible for supervising the administration of military justice in the state military forces, and performing other legal duties required by the adjutant general.

(16) "State military forces" means the National Guard of this state, as defined in 32 U.S.C. Sections 101(3), (4) and (6), and other militia or military forces organized under the laws of this state.

(17) "Superior commissioned officer" means a commissioned officer superior in rank or command.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 1, eff. Sept. 1, 1999.

Sec. 432.002. PERSONS SUBJECT TO CHAPTER. This chapter applies to all members of the state military forces who are not in federal service.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.003. JURISDICTION TO TRY CERTAIN PERSONNEL. (a) A person discharged from the state military forces who is later charged with having fraudulently obtained the discharge is, except as provided by Section 432.068, subject to trial by court-martial on that charge and is, after apprehension, subject to this chapter while in custody of the military for that trial. On conviction of that charge the person is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(b) A person who has deserted from the state military forces may not be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.004. TERRITORIAL APPLICABILITY OF CHAPTER. (a) This chapter applies in all places and to all persons otherwise subject to this chapter while they are serving outside the state and while they are going to and returning from service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this chapter 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.
Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.005. JUDGE ADVOCATES AND LEGAL OFFICERS. (a) The adjutant general shall appoint an officer of the state military forces as state judge advocate general. To be eligible for appointment, an officer must be a member of the State Bar of Texas for at least five years.

(b) The adjutant general shall appoint judge advocates and legal officers on recommendation by the state judge advocate general. To be eligible for appointment, a judge advocate or legal officer must be an officer of the state military forces and a member of the State Bar of Texas.

(c) The state judge advocate general or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice. The staff judge advocates or legal officers of a command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command or with the state judge advocate general.

(e) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in a case, may not later act as staff judge advocate or legal officer to a reviewing authority on the same case.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. APPREHENSION AND RESTRAINT

Sec. 432.011. APPREHENSION. (a) In this subchapter, "apprehend" means to take a person into custody.

(b) A person authorized by this chapter or by regulations issued under it to apprehend a person subject to this chapter, a marshal of a court-martial appointed under this chapter, and a peace officer having authority to apprehend offenders under the laws of the United States or of a state, may do so on reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, and noncommissioned officers may quell quarrels, frays, and disorders among persons subject to this chapter and apprehend persons subject to this chapter who take part in those activities.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.012. APPREHENSION OF DESERTERS. A civil officer or peace officer having authority to apprehend offenders under the laws of the United States or a state, territory, commonwealth, or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces and deliver the deserter into the custody of the state military forces.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.013. IMPOSITION OF RESTRAINT. (a) In this subchapter:

(1) "Arrest" means the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within certain specified limits.

(2) "Confinement" means the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by a commissioned officer by an oral or written order delivered in person, through other persons subject to this chapter, or through a person authorized by this chapter to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an oral or written order delivered in person or by another commissioned officer. The

authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) A person may not be ordered apprehended or into arrest or confinement except for probable cause.

(e) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until the proper authority may be notified.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.014. RESTRAINT OF PERSONS CHARGED WITH OFFENSES. A person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require, but if charged with only an offense normally tried by a summary court-martial, the person may not ordinarily be placed in confinement. If a person subject to this chapter is placed in arrest or confinement before 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. A person confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in a civil jail.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.015. REPORTS AND RECEIVING OF PRISONERS. (a) A provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail designated under Section 432.014 may not refuse to receive or keep a prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) A commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail designated under Section 432.014 to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.016. PUNISHMENT PROHIBITED BEFORE TRIAL. Subject to Section 432.093, a person, while being held for trial or the result of trial, may not be subjected to punishment or penalty other than arrest or confinement on the charges pending against the person, nor may the arrest or confinement imposed on the person be more rigorous than the circumstances require to ensure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.017. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES. (a) Under regulations prescribed under this chapter a person subject to this chapter who is on active state duty and who is accused of an offense against civil authority may be delivered, on request, to the civil authority for trial.

(b) If delivery under this section is made to a civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for the offense, on the request of competent military authority, shall be returned to military custody for the completion of the sentence.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. NONJUDICIAL PUNISHMENT

Sec. 432.021. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT. (a) Under regulations that 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, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred on such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed on a member of the state military forces under this section if the member, before the imposition of the punishment, has demanded trial by court-martial in lieu of the punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized by this section. If authorized by regulations of the governor, the governor or an

officer of general rank in command may delegate the governor's or officer's powers under this section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 432.046(b), if such a counsel is available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed three duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

(b) Subject to Subsection (a), a 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:

(1) on officers of his command:

(A) restriction to certain specified limits with or without suspension from duty, for not more than 30 days; or

(B) if imposed by the governor, or an officer of general rank in command:

(i) arrest in quarters for not more than 30 days;

(ii) forfeiture of not more than half of one month's pay a month for two months or a fine of not more than \$75;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days; or

(iv) detention of not more than half of one month's pay a month for three months; and

(2) on other personnel of his command:

(A) if imposed on a person attached to or embarked in a vessel, confinement for not more than three days;

(B) correctional custody for not more than seven days;

(C) forfeiture of not more than seven days' pay or a fine of not more than \$50;

(D) reduction of not more than two pay grades, if imposed by a commanding officer of the grade of colonel or above, or reduction of not more than one pay grade, if imposed by a commanding officer of a grade lower than colonel;

(E) extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than two hours a day, holidays included;

(F) restriction to certain specified limits, with or without suspension from duty for not more than 14 days;

(G) detention of not more than 14 days' pay; or

(H) if imposed by an officer of the grade of major or above:

(i) the punishment authorized under Subsection (b)(2)(A);

(ii) correctional custody for not more than 30 days;

(iii) forfeiture of not more than half of one month's pay a month for two months or a fine of not more than \$100;

(iv) 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 an 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 two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than two hours a day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than 60 days; or

(vii) detention of not more than half of one month's pay a month for three months.

(c) Detention of pay shall be for a stated period of not more than one year, but if the offender's term of service expires earlier, the detention shall terminate on that expiration. No two

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. If any of those punishments are combined to run consecutively, there must be an apportionment. In addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this section "correctional custody" means the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody may not be required to be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(d) An officer in charge may impose on enlisted members assigned to the unit of which he is in charge those of the punishments authorized under Subsections (b)(2)(A)-(G) that the governor specifically prescribes by regulation.

(e) The officer who imposes the punishment authorized in Subsection (b) 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 fine or forfeiture imposed under Subsection (b), whether or not executed. In addition, the officer 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. The officer may also mitigate reduction in grade to fine or forfeiture or detention of pay. If mitigating arrest in quarters to restriction or extra duties to restriction, the mitigated punishment may not be for a greater period than the punishment mitigated. If mitigating forfeiture of pay to detention of pay, the amount of the detention may not be greater than the amount of the forfeiture. If mitigating reduction in grade to fine, forfeiture, or detention of pay, the amount of the fine, forfeiture, or detention may not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(f) A person punished under this section who considers the punishment unjust or disproportionate to the offense may appeal to the next superior authority through the proper channel. 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 (e) by the officer who imposed the punishment. Before acting on an appeal from a punishment of arrest in quarters for more than seven days, correctional custody for more than seven days, forfeiture of more than seven days' pay, reduction of one or more pay grades from the fourth or a higher pay grade, extra duties for more than 14 days, restriction of more than 14 days' pay, or detention of more than 14 days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may similarly refer the case on appeal from a punishment imposed under Subsection (b).

(g) The imposition and enforcement of disciplinary punishment under this section for an 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 on trial and, when shown, shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(h) The governor by regulation may prescribe the form of records to be kept of proceedings under this section and may require that certain categories of those proceedings be in writing.

(i) A commanding officer may delegate authority to make a reduction in pay grade under Subsection (b)(2)(D) to the commanding officer's executive officer, chief of staff, or vice commander. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2005, 79th Leg., ch. 94, Sec. 1, eff. Sept. 1, 2005.

SUBCHAPTER D. COURTS-MARTIAL

Sec. 432.031. COURTS-MARTIAL CLASSIFIED. The three kinds of courts-martial in each of the state military forces are:

- (1) general court-martial, consisting of:
 - (A) a military judge and not fewer than five members; or

(B) only a military judge, if before the court is assembled 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;

(2) special court-martial, consisting of:
(A) not fewer than three members; or
(B) a military judge and not fewer than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in Subdivision (1)(B) requests; and

(3) summary court-martial, consisting of one officer, who must be a military judge or an attorney licensed to practice law in this state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL. Each force of the state military forces has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.033. JURISDICTION OF GENERAL COURT-MARTIAL. (a) Subject to Section 432.032, a general court-martial has jurisdiction to try a person subject to this chapter for any offense made punishable by this chapter and may, under limitations the governor prescribes, adjudge any of the following punishments:

(1) a fine of not more than \$1,000 or confinement for not more than 360 days;

(2) forfeiture of pay and allowances;

(3) reprimand;

(4) dismissal or dishonorable discharge;

(5) reduction of a noncommissioned officer to the ranks; or

(6) any combination of those punishments.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under Section 432.046(b) is detailed to represent the accused; and a military judge is detailed to the trial.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2005, 79th Leg., ch. 94, Sec. 2, eff. Sept. 1, 2005.

Sec. 432.034. JURISDICTION OF SPECIAL COURT-MARTIAL. (a) Subject to Section 432.032, a special court-martial has jurisdiction to try a person subject to this chapter, except a commissioned officer, for any offense for which he may be punished under this chapter. A special court-martial has the same powers of punishment as a general court-martial, except that a special court-martial may not impose more than a \$500 fine or confinement of more than 180 days for a single offense.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under Section 432.046(b) is detailed to represent the accused, and a military judge is detailed to the trial, except in a case in which a military judge cannot be detailed to the trial because of physical conditions or military exigencies. In a case in which a military judge is not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason a military judge could not be detailed.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2005, 79th Leg., ch. 94, Sec. 3, eff. Sept. 1, 2005.

Sec. 432.035. JURISDICTION OF SUMMARY COURT-MARTIAL. (a) Subject to Section 432.032, a summary court-martial has jurisdiction to try persons subject to this chapter, except officers, for any offense made punishable by this chapter.

(b) A person of whom a summary court-martial has jurisdiction may not be brought to trial before a summary court-martial if the person objects. If an accused objects to trial by summary court-martial, trial may be ordered by special or general court-martial, as appropriate.

(c) A summary court-martial may sentence a person to pay a fine of not more than \$200 or confinement for not more than 90 days for a single offense, to forfeiture of pay and allowances, and to

reduction of a noncommissioned officer to the ranks.
Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended
by Acts 2005, 79th Leg., ch. 94, Sec. 4, eff. Sept. 1, 2005.

Sec. 432.036. JURISDICTION OF COURT-MARTIAL NOT
EXCLUSIVE. The provisions of this chapter conferring jurisdiction
on courts-martial do not deprive military commissions, provost
courts, or other military tribunals of concurrent jurisdiction with
respect to offenders or offenses that by statute or by the law of
war may be tried by military commissions, provost courts, or other
military tribunals.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. COMPOSITION OF COURTS-MARTIAL

Sec. 432.041. WHO MAY CONVENE GENERAL COURT-MARTIAL. In the
militia or state military forces not in federal service a general
court-martial may be convened by:

(1) the governor; or

(2) the adjutant general or any other general officer
under regulations the governor may adopt.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.042. WHO MAY CONVENE SPECIAL COURT-MARTIAL. In the
state military forces not in federal service, any commander in the
grade of lieutenant colonel or in a higher grade may convene a
special court-martial.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended
by Acts 1999, 76th Leg., ch. 309, Sec. 3, eff. Sept. 1, 1999.

Sec. 432.043. WHO MAY CONVENE SUMMARY COURT-MARTIAL. In the
state military forces not in federal service, any commander in the
grade of major or in a higher grade may convene a summary
court-martial.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended
by Acts 1999, 76th Leg., ch. 309, Sec. 4, eff. Sept. 1, 1999.

Sec. 432.044. WHO MAY SERVE ON COURT-MARTIAL. (a) A state
commissioned officer in a duty status is eligible to serve on a
court-martial for the trial of a person who may lawfully be brought
before the court for trial.

(b) A warrant officer in a duty status is eligible to serve
on general and special courts-martial for the trial of a person,
other than a commissioned officer, who may lawfully be brought
before the courts for trial.

(c) An enlisted member of the state military forces in a
duty status who is not a member of the same unit as the accused is
eligible to serve on general and special courts-martial for the
trial of an enlisted member of the state military forces who may
lawfully be brought before the court for trial if, before the
conclusion of a session called by the military judge under Section
432.064(a) before 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 a request, the accused may not be tried by a general
or special court-martial the membership of which does not include
enlisted members in a number comprising at least one-third of the
total membership of the court, unless eligible members cannot be
obtained because of physical conditions or military exigencies. If
a sufficient number of enlisted members cannot be obtained, the
court may be convened and the trial held without them, but the
convening authority shall make a detailed written statement, to be
appended to the record, stating why they could not be obtained. In
this subsection, "unit" means a regularly organized body of the
state military forces.

(d) If it can be avoided, a person subject to this chapter
may not be tried by a court-martial, a member of which is junior to
him in rank or grade. On convening a court-martial, the convening
authority shall detail as members of the court-martial members of
the state military forces that, in his opinion, are best qualified
for the duty because of age, education, training, experience,
length of service, and judicial temperament. A member of the state
military forces is not eligible to serve as a member of a general or
special court-martial if the member is the accuser or a witness for
the prosecution or has acted as investigating officer or counsel in
the same case.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended
by Acts 1999, 76th Leg., ch. 309, Sec. 5, eff. Sept. 1, 1999.

Sec. 432.045. MILITARY JUDGE OF COURT-MARTIAL. (a) The
authority convening a general court-martial shall, and, subject to
regulations issued by the governor, the authority convening a

special or summary court-martial may, detail a military judge to the court-martial. A military judge shall preside over open sessions of the court-martial to which the judge has been detailed.

(b) A military judge must be a commissioned officer of the state military forces, a member of the State Bar of Texas, and certified to be qualified for duty as a military judge by the state judge advocate general of the state military forces.

(c) The military judge of a general court-martial shall be designated by the state judge advocate general or his designee for detail by the convening authority, and unless the court-martial was convened by the governor or the adjutant general, neither the convening authority nor a member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge's performance of duty as a military judge.

(d) A person who is the accuser or a witness for the prosecution or has acted as investigating officer or counsel in a case is not eligible to act as military judge in the case.

(e) 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.

(f) A military judge detailed to preside over a court-martial is not subject to any report by the convening authority concerning the effectiveness, fitness, or efficiency of that military judge that relates to performance of duty as a military judge, nor any member of his staff.

(g) A trial counsel, defense counsel, military judge, legal officer, summary court officer, or any other person certified by the state judge advocate general to perform legal functions under this chapter shall be used interchangeably, as needed, among all of the state military forces.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 6, eff. Sept. 1, 1999.

Sec. 432.046. **DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL.** (a) The authority convening each general, special, or summary court-martial shall detail trial counsel, defense counsel, and assistants that the authority considers appropriate. A person who has acted as investigating officer, military judge, or court member in a case may not act later as trial counsel or assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution may not act later in the same case for the defense, nor may a person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial must be:

- (1) a member of the State Bar of Texas; and
- (2) certified as competent to perform those duties by the state judge advocate general.

(c) In the case of a special or summary court-martial the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under Subsection (b) unless counsel having those qualifications cannot be obtained because of physical conditions or military exigencies. If counsel having those qualifications cannot be obtained, the court may be convened and the trial held, but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with those qualifications could not be obtained. If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified. If the trial counsel is a judge advocate or a member of the State Bar of Texas, the defense counsel detailed by the convening authority must be a judge advocate or a member of the State Bar of Texas.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 7, eff. Sept. 1, 1999.

Sec. 432.047. **DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS.** Under regulations that the governor prescribes, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal:

(1) shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission, or tribunal; and

(2) may detail or employ interpreters who shall

interpret for the court, commission, or tribunal.
Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.048. ABSENT AND ADDITIONAL MEMBERS. (a) A member of a general or special court-martial may not be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) If a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not fewer than five members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) If a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not fewer than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation of that evidence is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) 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 432.031(1)(B) or (2)(C), 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 stipulation of that evidence is read in court in the presence of the new military judge, the accused, and counsel for both sides.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. PRETRIAL PROCEDURE

Sec. 432.051. CHARGES AND SPECIFICATIONS. (a) Charges and specifications must be signed by a person subject to this chapter, under oath, and before a commissioned officer of the state military force authorized to administer oaths, and must state that:

(1) the signer has personal knowledge of, or has investigated, the matters set forth; and

(2) the matters set forth are true in fact to the best of the signer's knowledge and belief.

(b) On the preferring of charges, the proper authority shall take immediate steps to determine the disposition that should be made in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.052. COMPULSORY SELF-INCRIMINATION PROHIBITED. (a) A person subject to this chapter may not compel any person to incriminate himself or to answer a question the answer to which may tend to incriminate him.

(b) A person subject to this chapter may not interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) A person subject to this chapter may not compel any person to make a statement or produce evidence before a military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) A statement obtained from a person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement, may not be received in evidence against the person in a trial by court-martial.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.053. INVESTIGATION. (a) A charge or specification may not be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth has been made. This investigation must include inquiry as to the truth of the matter set forth in the charges, consideration of the

form of charges, and a recommendation as to the disposition that should be made of the case in the interest of justice and discipline.

(b) The accused is entitled to be advised of the charges against him and of his right to be represented at that investigation by counsel. On the accused's own request, he is entitled to be represented by civilian counsel if provided by him, or by military counsel of his own selection if that counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides, and a copy shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in Subsection (b), further investigation of that charge is not necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this section are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.054. FORWARDING OF CHARGES. (a) If a person is held for trial by general court-martial, the commanding officer shall, not later than the eighth day after the date the accused is ordered into arrest or confinement, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction.

(b) If compliance with Subsection (a) is not practicable, the commanding officer shall instead report in writing to that officer the reasons for delay.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.055. ADVICE OF STAFF JUDGE ADVOCATE AND REFERENCE FOR TRIAL. (a) Before directing the trial of a charge by general court-martial, the convening authority shall refer it to the authority's staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless the authority has found that the charge alleges an offense under this chapter and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications that are needed to make them conform to the evidence may be made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.056. SERVICE OF CHARGES. (a) The trial counsel to whom court-martial charges are referred for trial shall cause to be served on the accused a copy of the charges on which trial is to be had.

(b) In time of peace a person may not be brought to trial against his objections or be required to participate by himself or counsel in a session called by the military judge under Section 432.064(a) in a general court-martial case within five days after the date of service of charges on him, or in a special court-martial case within three days after the date of service of charges on him.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER G. TRIAL PROCEDURE

Sec. 432.061. PROCEDURE. The procedure, including modes of proof, in cases before military courts and other military tribunals may by regulations be prescribed by the governor. The regulations, so far as the governor considers practicable, must conform to the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state but may not be contrary to or inconsistent with this chapter.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.062. UNLAWFULLY INFLUENCING ACTION OF COURT. (a) An authority convening a general, special, or summary court-martial, another commanding officer, or officer serving one of their staffs may not censure, reprimand, or admonish the court, a court member, military judge, or counsel of the court with respect to the findings or sentence adjudged by the court or with respect to another exercise of its or his functions in the conduct of the proceeding.

(b) A person subject to this chapter may not attempt to coerce or by unauthorized means influence the action of the court-martial or another military tribunal or a member of the tribunal in reaching the findings or sentence in a case or the action of a convening, approving, or reviewing authority with respect to his judicial acts.

(c) Subsections (a) and (b) do not apply to:

(1) general instructional or informational courses in military justice if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial; or

(2) statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(d) In the preparation of an effectiveness, fitness, or efficiency report, or another report or document used in whole or part for determining whether a member of the state military forces is qualified to be advanced in grade, in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on duty, a person subject to this chapter may not:

(1) consider or evaluate the performance of duty of the member as a member of a court-martial; or

(2) give a less favorable rating or evaluation of a member of the state military forces because of the zeal with which the member, as counsel, represented an accused before a court-martial.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.063. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special, or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 432.046. If the accused has counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel, in the event of conviction, may forward for attachment to the record of proceedings, a brief of the matters the counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record that the counsel considers appropriate.

(d) An assistant trial counsel of a general court-martial, under the direction of the trial counsel or if he is qualified to be a trial counsel as required by Section 432.046, may perform any duty imposed on the trial counsel of the court by law, regulation, or the custom of the service. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 432.046, may perform any duty imposed on counsel for the accused by law, regulation, or the custom of the service.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.064. SESSIONS. (a) At any time after the service of charges that have been referred for trial to a court-martial composed of a military judge and members, the military judge, subject to Section 432.056, may call the court into session without the presence of the members for the purpose of:

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

(2) hearing and ruling on matters that may be ruled on by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

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

(4) performing any other procedural function that may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 432.061 and that does not require the presence of the members of the court.

(b) Proceedings under this section shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members 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 in cases in which a military judge has been detailed to the court, the military judge.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.065. CONTINUANCES. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to a party for the period, and as often, as may appear to be just.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.066. CHALLENGES. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are entitled to one preemptory challenge, but the military judge may not be challenged except for cause.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.067. OATHS. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken in the presence of the accused, and shall read as follows:

(1) for court members: "You, _____, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(2) for a military judge: "You, _____, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as military judge of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(3) for a trial counsel and assistant trial counsel: "You, _____ (and) _____, do swear (or

affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(4) for defense counsel and assistant defense counsel: "You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(5) for a court of inquiry:

(A) the recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward. So help you God."

(B) then the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(6) all persons who give evidence before a court-martial or court of inquiry shall be examined on oath administered by the presiding officer in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(7) for a reporter or interpreter: "You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.068. LIMITATIONS. (a) A person charged with desertion or absence without leave in time of war, aiding the enemy, or mutiny may be tried and punished at any time without limitation.

(b) A person charged with desertion in time of peace or with an offense punishable under Sections 432.157, 432.158, or 432.159 is not liable to be tried by court-martial if the offense was committed more than three years before the date of receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) A person charged with any offense is not liable to be tried by court-martial or punished under Section 432.021 if the offense was committed more than two years before the date of receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 432.021.

(d) A period in which the accused is absent from territory in which the state has the authority to apprehend him, is in the custody of civil authorities, or is in the hands of the enemy is excluded in computing the period of limitation prescribed by this section.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.069. FORMER JEOPARDY. (a) A person may not be tried a second time in a military court of the state for the same offense.

(b) A proceeding in which an accused has been found guilty by a court-martial on a charge or specification is not a trial for the purposes of this section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without fault of the accused is a trial for the purposes of this section.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.070. PLEAS OF ACCUSED. (a) If an accused after arraignment makes an irregular pleading or after a plea of guilty sets up matter inconsistent with the plea, if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) With respect to a charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a

finding of guilty on the charge or specification may, if permitted by regulations of the governor, be entered immediately without vote. This finding constitutes the finding of the court unless the plea of guilty is withdrawn before the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.071. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE. (a) The trial counsel, defense counsel, accused, and court-martial have equal opportunity to obtain witnesses and other evidence. Each has the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) issue a warrant for the arrest of an accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) issue subpoenas duces tecum 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.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence runs to any part of the state and shall be executed by civil officers or peace officers as described by the laws of the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.072. REFUSAL TO APPEAR OR TESTIFY. (a) A person not subject to this chapter commits an offense if the person:

(1) has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before a military or civil officer or peace officer designated to take a deposition to be read in evidence before a court;

(2) has been duly paid or tendered by the adjutant general's department the fees and mileage of a witness at the rates allowed to witnesses under Section 432.192; and

(3) wilfully neglects or refuses to appear, qualify as a witness, testify, or produce evidence that the person may have been legally subpoenaed to produce.

(b) An offense under this section is punishable by fine not to exceed \$1,000 or confinement not to exceed 60 days in jail, or by both. The witness may be prosecuted in the appropriate county court.

(c) The appropriate prosecuting official for the state in a county court having jurisdiction where the military proceeding was convened, on submission of a complaint to the official by the presiding officer of a military court, commission, court of inquiry, or board, shall file an information against and prosecute a person violating this section.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.073. CONTEMPT. A military court may punish for contempt a person who uses a menacing word, sign, or gesture in its presence, or who disturbs its proceedings by riot or disorder. Punishment may not exceed confinement for 30 days and a fine of \$100.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.074. DEPOSITIONS. (a) At any time after charges have been signed, as provided in Section 432.051, a party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, the authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized to administer oaths by laws of the state or by the laws of the place where the deposition is taken.

(d) A duly authenticated deposition taken on reasonable notice to the other parties, to the extent otherwise admissible

under the rules of evidence, may be read in evidence before a military court or commission, or in a proceeding before a court of inquiry or military board, if it appears that:

(1) the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or more than 100 miles from the place of trial or hearing;

(2) the witness because of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) the present location of the witness is unknown.
Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.075. ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY. (a) In a case not extending to the dismissal of a commissioned officer, the sworn testimony contained in the duly authenticated record of proceedings of a court of inquiry of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by a party before a court-martial if the accused was a party before the court of inquiry and the same issue was involved or if the accused consents to the introduction of the evidence.

(b) The testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) The testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers have the right to counsel and the right to cross examination of all witnesses.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.076. VOTING AND RULINGS. (a) Voting by members of a general or special court-martial on the findings or sentence, and by members of a court-martial without a military judge upon questions of challenge, must be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall immediately announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule on all questions of law and interlocutory questions arising during the proceedings. A ruling made by the military judge on a question of law or interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge on a question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change the ruling at any time during the trial. Unless the ruling is final, if a member objects to it the court shall be cleared and closed and the question decided by a voice vote as provided by Section 432.077 beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge, in the presence of the accused and counsel, shall instruct the members of the court as to the elements of the offense and charge them that:

(1) the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is not a reasonable doubt; and

(4) the burden of proof of establishing the guilt of the accused beyond reasonable doubt is on the state.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall on request find the facts specially. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear

in that document.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.077. NUMBER OF VOTES REQUIRED. (a) A person may be convicted of an offense only by the concurrence of two-thirds of the members present when the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a finding of guilty or to reconsider a sentence for the purpose of reducing it may be made by a lesser vote that indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.078. COURT-MARTIAL TO ANNOUNCE ACTION. A court-martial shall announce its findings and sentence to the parties as soon as determined.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.079. RECORD OF TRIAL. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it. The record must be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge because of the judge's death, disability, or absence, it must be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it because of the counsel's death, disability, or absence. In a court-martial consisting of only a military judge, the record must be authenticated by the court reporter under the same conditions that would impose that duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record must contain the matters prescribed by regulations of the governor.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record must contain the matter and be authenticated in the manner prescribed by regulations of the governor.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER H. SENTENCES

Sec. 432.091. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED. Punishment by flogging, branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted on any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.092. LIMITS. The punishment that a court-martial may direct for an offense may not exceed the limits prescribed by this chapter nor limits prescribed by the governor.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.093. EFFECTIVE DATE OF SENTENCES. (a) If 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. A forfeiture may not extend to pay or allowances accrued before that date.

(b) A 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 are excluded in computing the service of the term of confinement.

(c) 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 the convening

authority's jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence. 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 that officer's jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In the militia or state military forces not in federal service, a sentence of dismissal or dishonorable discharge may not be executed until it is approved by the governor.

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

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.094. EXECUTION OF CONFINEMENT. (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be executed by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons 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 a political subdivision of the state.

(b) The omission of the words "hard labor" from a sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the governor or by a person authorized by the governor to act under Section 432.014, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. The keeper, officer, or warden may not require payment of a fee or charge for receiving or confining a person.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER I. REVIEW OF COURTS-MARTIAL

Sec. 432.101. ERROR OF LAW; LESSER INCLUDED OFFENSE. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm instead as much of the finding as includes a lesser included offense.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.102. INITIAL ACTION ON RECORD. After trial by court-martial the record shall be forwarded to the convening authority, and action on the record may be taken by the person who convened the court, a commissioned officer then commanding, a successor in command, or any officer exercising general court-martial jurisdiction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.103. SAME GENERAL COURT-MARTIAL RECORDS. The convening authority shall refer the record of each general court-martial to the authority's judge advocate who shall submit the judge advocate's written opinion on the record to the convening authority. If the final action of the court resulted in an acquittal of all charges and specifications, the opinion is limited to questions of jurisdiction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.104. RECONSIDERATION AND REVISION. (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) If an apparent error or omission is in the record or the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence that can be corrected without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. However, a record may not be returned for:

(1) reconsideration of a finding of not guilty, or a

ruling that amounts to a finding of not guilty;

(2) consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge that sufficiently alleges a violation of this chapter; or

(3) increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.105. REHEARINGS. (a) If the convening authority disapproves the finding and sentence of a court-martial, the authority, unless there is lack of sufficient evidence in the record to support the findings, may order a rehearing. The authority shall state the reasons for a disapproval. If the authority disapproves the findings and sentence and does not order a rehearing, the authority shall dismiss the charges.

(b) Each rehearing must take place before a court-martial composed of members who were not members of the court-martial that first heard the case. On a rehearing the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial, and sentence in excess of or more severe than the original sentence may not be imposed, unless the sentence is based on a finding of guilty of an offense not considered on the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.106. APPROVAL BY CONVENING AUTHORITY. In acting on the findings and sentence of a court-martial, the convening authority may approve only findings of guilty and the sentence or part or amount of the sentence that the authority finds correct in law and fact and that the authority in his discretion determines should be approved. Unless the authority indicates otherwise, approval of the sentence is approval of the findings and sentence.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.107. DISPOSITION OF RECORDS AFTER REVIEW BY CONVENING AUTHORITY. (a) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

(b) If the convening authority is not the governor, and if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the state judge advocate general for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted on, transmitted, and disposed of as prescribed by regulations of the governor.

(d) The state judge advocate general shall review the record of trial in each case sent to him for review under Subsection (b). 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 general is limited to questions of jurisdiction.

(e) The state judge advocate general shall take final action in any case reviewable by him.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.108. REVIEW BY STATE JUDGE ADVOCATE GENERAL. (a) In a case reviewable by the state judge advocate general, the state judge advocate general may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only findings of guilty and the sentence or part of the sentence that he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the state judge advocate general 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. If the state judge advocate general sets aside the findings and sentence, he may order a rehearing, unless the setting aside is based on lack of sufficient evidence in the record to support the findings. If the state judge advocate general sets aside the findings and sentence and does not order a rehearing, he shall order

that the charges be dismissed.

(b) In a case reviewable by the state judge advocate general, the state judge advocate general shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 8, eff. Sept. 1, 1999.

Sec. 432.109. REVIEW BY TEXAS COURT OF MILITARY APPEALS. (a) The Texas Court of Military Appeals, located for administrative purposes only in the adjutant general's department, consists of five judges appointed by the adjutant general on the advice and recommendation of the state judge advocate general for staggered six-year terms. A judge appointed to fill a vacancy occurring before the expiration of the term for which the judge's predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The adjutant general, on the advice and recommendation of the state judge advocate general, shall appoint the chief judge of the court. A person is eligible for appointment to the court if the person:

- (1) is a member of the State Bar of Texas;
- (2) is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the armed forces of the United States; and
- (3) has been engaged in the active practice of law for at least five years and has at least five years' experience as a staff judge advocate, judge advocate, or legal officer with the state military forces, except that the requirements of this subdivision are satisfied by equivalent experience or practice in the armed forces of the United States.

(b) The court may promulgate rules of procedure, except that a majority constitutes a quorum and the concurrence of three judges is necessary for a decision of the court.

(c) Judges of the Texas Court of Military Appeals may be removed by the adjutant general, on notice and hearing, for neglect of duty or malfeasance in office or mental or physical disability.

(d) If a judge of the Texas Court of Military Appeals is temporarily unable to perform his duties, the adjutant general, on the advice and recommendation of the state judge advocate general, may designate a military judge to fill the office for the period of disability.

(e) The judges of the Texas Court of Military Appeals, while sitting in review of a matter placed under their jurisdiction by this chapter and while travelling to and from such a session, shall be paid compensation equal to the compensation appropriated by the legislature for judges of the Texas Courts of Appeals, plus the actual cost of their meals and lodging and actual travel expense or the amount set by legislative appropriation if private transportation is used.

(f) The Texas Court of Military Appeals has appellate jurisdiction, on petition of an accused, to hear and review the record in:

- (1) all general and special court-martial cases; and
- (2) a summary court-martial case in which a judge of this court has made a determination that there may be a constitutional issue involved.

(g) An accused may petition the Texas Court of Military Appeals for review of a court-martial conviction not later than the 60th day after the date the accused or the accused's counsel is notified of the final action on the accused's case, whichever date is earlier. If the court fails or refuses to grant the petition for review, the final action of the convening authority is considered approved. If the court grants a petition for review, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this chapter until the court's final decision on the case.

(h) In a case reviewable under Subsection (f)(1), the Texas Court of Military Appeals may act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under Subsection (f)(2), the court need take action only with respect to issues specified in the grant of review. The court shall take action only with respect to matters of law, and the action of the court is final.

(i) If the Texas Court of Military Appeals sets aside the findings and sentence, it may order a rehearing, unless the setting

aside is based on lack of sufficient evidence in the record to support the findings. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Texas Court of Military Appeals has acted on the case, the record shall be returned to the state judge advocate general, who shall notify the convening authority of the court's decision. If further action is required, the state judge advocate general shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, the convening authority may dismiss the charges. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1021, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 309, Sec. 9, eff. Sept. 1, 1999.

Sec. 432.110. APPELLATE COUNSEL. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel on an appeal authorized under this chapter. The accused has the additional right to be represented by civilian counsel at his own expense. If the defense or trial counsel becomes unable to perform these duties because of illness or other disability, the convening authority shall appoint a qualified trial or defense counsel to continue the proceedings. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.111. VACATION OF SUSPENSION. (a) Before the vacation of the suspension of a special court-martial sentence that as approved includes a dismissal or dishonorable discharge, or of a general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer has the right to be represented at the hearing by military counsel.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases under Subsection (a). If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.112. PETITION FOR NEW TRIAL. At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate general for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Texas Court of Military Appeals when the petition is filed, the appeal does not proceed until the state judge advocate general has made a decision on the request. If the petition is granted, the appeal shall be dismissed. If the petition is denied, the court of military appeals shall continue its proceedings on the case. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.113. REMISSION OR SUSPENSION. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of a 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.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.114. RESTORATION. (a) Under regulations the governor prescribes, all rights, privileges, and property affected by an executed part of a court-martial sentence that has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed on a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute a form of

discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed only by the governor to the commissioned grade and with the rank that in the opinion of the governor the former officer would have attained if the officer had not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.115. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES. The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this chapter, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding on all departments, courts, agencies, and officers of the state, subject only to action on a petition for a new trial as provided in Section 432.112.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER J. PUNITIVE ARTICLES

Sec. 432.121. PERSONS TO BE TRIED OR PUNISHED. A person may not be tried or punished for any offense provided for in this subchapter unless it was committed while the person was in a duty status or during a period in which the person was under lawful orders to be in a duty status.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.122. PRINCIPALS. A person subject to this chapter is a principal if the person:

- (1) commits an offense punishable under this chapter, or aids, abets, counsels, commands, or procures its commission; or
- (2) causes an act to be done that if directly performed by the person would be punishable under this chapter.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.123. ACCESSORY AFTER THE FACT. A person subject to this chapter shall be punished as a court-martial directs if the person knows that an offense punishable under this chapter has been committed and receives, comforts, or assists the offender in order to hinder or prevent the offender's apprehension, trial, or punishment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.124. CONVICTION OF LESSER INCLUDED OFFENSE. 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 in the offense charged.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.125. ATTEMPTS. (a) An act done with specific intent to commit an offense under this chapter amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(b) A person subject to this chapter who attempts to commit an offense punishable under this chapter shall be punished as a court-martial directs, unless otherwise specifically prescribed.

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

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.126. CONSPIRACY. A person subject to this chapter who conspires with another person to commit an offense under this chapter shall be punished as a court-martial directs if one or more of the conspirators does an act to effect the object of the conspiracy.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.127. SOLICITATION. (a) A person subject to this chapter who solicits or advises another or others to desert in violation of Section 432.130 or mutiny in violation of Section 432.139 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense. If the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial directs.

(b) A person subject to this chapter who solicits or advises another or others to commit an act of sedition in violation of

Section 432.139 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense. If the offense solicited or advised is not committed, the person shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 10, eff. Sept. 1, 1999.

Sec. 432.128. FRAUDULENT ENLISTMENT, APPOINTMENT, OR SEPARATION. A person shall be punished as a court-martial directs if the person:

(1) procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances under the enlistment or appointment; or

(2) procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.129. UNLAWFUL ENLISTMENT, APPOINTMENT, OR SEPARATION. A person subject to this chapter who effects an enlistment or appointment in or a separation from the state military forces of a 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 directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.130. DESERTION. (a) A member of the state military forces is guilty of desertion if the member:

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the state military forces, enlists or accepts an appointment in the same or another of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated.

(b) A commissioned officer of the state 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 permanently is guilty of desertion.

(c) A person found guilty of desertion or attempt to desert shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.131. ABSENCE WITHOUT LEAVE. A person subject to this chapter shall be punished as a court-martial directs if the person without authority:

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.132. MISSING MOVEMENT. A person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required to move in the course of duty shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.133. CONTEMPT TOWARDS GOVERNOR. A person subject to this chapter who uses contemptuous words against the governor shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.134. DISRESPECT TOWARD SUPERIOR COMMISSIONED OFFICER. A person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.135. ASSAULTING OR WILFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER. A person subject to this chapter shall be punished as a court-martial directs if the person:

(1) strikes his superior commissioned officer or draws

or lifts up a weapon or offers any violence against him while in the execution of his office; or

(2) wilfully disobeys a lawful command of his commissioned officer.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.136. INSUBORDINATE CONDUCT TOWARD WARRANT OFFICER OR NONCOMMISSIONED OFFICER. A warrant officer or enlisted member shall be punished as a court-martial directs if the officer or member:

(1) strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) 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.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.137. FAILURE TO OBEY ORDER OR REGULATION. A person subject to this chapter shall be punished as a court-martial directs if the person:

(1) violates or fails to obey a lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the state military forces that it is the person's duty to obey, fails to obey the order; or

(3) is derelict in the performance of the person's duties.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.138. CRUELTY AND MALTREATMENT. A person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.139. MUTINY, SEDITION, FAILURE TO SUPPRESS MUTINY OR SEDITION. A person subject to this chapter who:

(1) 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 a violence or disturbance is guilty of mutiny;

(2) 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;

(3) 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 that he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.140. RESISTANCE, BREACH OF ARREST, AND ESCAPE. A person subject to this chapter who resists apprehension, breaks arrest, or escapes from physical restraint lawfully imposed shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.141. RELEASING PRISONER WITHOUT PROPER AUTHORITY. A person subject to this chapter who, without proper authority, releases a prisoner committed to his charge, or who through neglect or design permits the prisoner to escape, shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.142. UNLAWFUL DETENTION OF ANOTHER. A person subject to this chapter who, except as provided by law or regulation, apprehends, arrests, or confines a person shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.143. NONCOMPLIANCE WITH PROCEDURAL RULES. A person subject to this chapter shall be punished as a court-martial directs if the person:

(1) is responsible for unnecessary delay in the disposition of a case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or

comply with a provision of this chapter regulating the proceedings before, during, or after trial of an accused.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.151. FALSE OFFICIAL STATEMENTS. A person subject to this chapter 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 directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.152. MILITARY PROPERTY--LOSS, DAMAGE, DESTRUCTION, OR WRONGFUL DISPOSITION. A person subject to this chapter shall be punished as a court-martial directs if the person, without proper authority, sells or otherwise disposes of, or wilfully or through neglect damages, destroys, loses, or suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.153. PROPERTY OTHER THAN MILITARY PROPERTY--WASTE, SPOILAGE, OR DESTRUCTION. A person subject to this chapter who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.154. IMPROPER HAZARDING OF VESSEL. A person subject to this chapter who wilfully and wrongfully or who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.155. DRIVING WHILE INTOXICATED OR WHILE UNDER INFLUENCE OF NARCOTIC DRUG. A person subject to this chapter who operates a vehicle while under the influence of intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.156. DRUNK ON DUTY; SLEEPING ON POST; LEAVING POST BEFORE RELIEF. A person subject to this chapter who is found under the influence of intoxicating liquor or narcotic drugs while on duty, or found sleeping on his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.157. MALINGERING. A person subject to this chapter shall be punished as a court-martial directs if the person, for the purpose of avoiding work, duty, or service in the state military forces:

(1) feigns illness, physical disablement, mental lapse, or derangement; or

(2) intentionally inflicts self-injury.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.158. RIOT OR BREACH OF PEACE. A person subject to this chapter who causes or participates in a riot or breach of the peace shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.159. PROVOKING SPEECHES OR GESTURES. A person subject to this chapter who uses provoking or reproachful words or gestures towards another person subject to this chapter shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.160. LARCENY AND WRONGFUL APPROPRIATION. (a) A person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or any other person any money, personal property, or article of value of any kind:

(1) with intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) A person found guilty of larceny or wrongful appropriation shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.161. FORGERY. A person subject to this chapter is guilty of forgery and shall be punished as a court-martial directs if the person, with intent to defraud:

(1) falsely makes or alters a signature to a writing or any part of a writing that would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.162. EXTORTION. A person subject to this chapter who communicates threats to another person with the intent to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.163. ASSAULT. A person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.164. PERJURY. A person subject to this chapter who in a judicial proceeding or in a court of justice conducted under this chapter wilfully and corruptly gives, on a lawful oath or in any form allowed by law to be substituted for an oath, false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.165. FRAUDS AGAINST GOVERNMENT. A person subject to this chapter on conviction shall be punished as a court-martial directs if the person:

(1) knowing it to be false or fraudulent:

(A) makes a claim against the United States, the state, or an officer of the United States or the state; or

(B) presents to a person in the civil or military service of the United States or the state for approval or payment a claim against the United States, the state, or an officer of the United States or the state;

(2) for the purpose of obtaining the approval, allowance, or payment of a claim against the United States, the state, or an officer of the United States or the state:

(A) makes or uses a writing or other paper knowing it to contain false or fraudulent statements;

(B) makes an oath to a fact or to a writing or other paper knowing the oath to be false; or

(C) forges or counterfeits a signature on a writing or other paper, or uses such a signature knowing it to be forged or counterfeited;

(3) having charge, possession, custody, or control of money or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to a person having authority to receive it, any amount of the money or property less than that for which he receives a certificate or receipt; or

(4) being authorized to make or deliver a paper certifying the receipt of property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to a person the paper without having full knowledge of the truth of its statements and with intent to defraud the United States or the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.166. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN. A commissioned officer or officer candidate who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial directs.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.167. GENERAL ARTICLE. Whether or not specifically mentioned by this chapter, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit on the state military forces, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary

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

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER K. MISCELLANEOUS PROVISIONS

Sec. 432.181. COURTS OF INQUIRY. (a) Courts of inquiry to investigate any matter may be convened by the governor, by a person designated by the governor for that purpose, or by a person authorized to convene a general court-martial by this chapter, whether or not a person involved has requested an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) A person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. A person subject to this chapter or employed in the division of military affairs who has a direct interest in the subject of inquiry has the right to be designated as a party on request to the court. A person designated as a party is entitled to due notice and has the rights to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.182. AUTHORITY TO ADMINISTER OATHS. (a) The following persons may administer oaths for the purpose of military administration including military justice, and they have the general powers of a notary public in the performance of all notarial acts to be executed by members of the state military forces, wherever they may be:

(1) the state judge advocate general and all judge advocates;

(2) law specialists and military judges;

(3) a summary courts-martial officer;

(4) adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(5) administrative officers, assistant administrative officers, and acting administrative officers;

(6) staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and

(7) all other persons designated by regulations of the state military forces or by statute.

(b) The following persons may administer oaths necessary in the performance of their duties:

(1) the president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;

(2) the president, counsel for the court, and recorder of any court of inquiry;

(3) officers designated to take a deposition;

(4) persons detailed to conduct an investigation;

(5) recruiting officers; and

(6) all other persons designated by regulations of the state military forces or by statute.

(c) A fee may not be paid to or received by any person for the performance of a notarial act authorized by this section.

(d) The signature without seal of such a person acting as notary, together with the title of his office, is prima facie evidence of his authority.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 11, eff. Sept. 1, 1999.

Sec. 432.183. SECTIONS TO BE EXPLAINED. Sections 432.002,

432.003, 432.011-432.017, 432.021, 432.044, 432.046, 432.052, 432.062, 432.063, 432.091, 432.121-432.167, and 432.183-432.185 shall be carefully explained to every enlisted member at the time of or not later than the 30th day after the date of his enlistment, transfer, or induction into, or his order to duty in or with, any of the state military forces. They shall also be explained annually to each unit of the state military forces. A complete text of this chapter and of the regulations prescribed by the governor under this chapter shall be made available to any member of the state military forces, on his request, for his personal examination. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.184. COMPLAINTS OF WRONGS. (a) A member of the state military forces who believes himself wronged by his commanding officer, and who, on due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the next highest commander, who shall examine into the complaint and take proper measures for redressing the wrong complained of, and send to the adjutant general, as soon as possible, a true statement of that complaint with the proceedings had on it.

(b) If an action or proceeding of any nature is commenced in a court other than a military court by any person against a member of the state military forces for any act done or caused, or ordered or directed to be done, in the line of duty while the member was not in federal service, as determined by the adjutant general, all expenses of representation in the action or proceeding, including fees of witnesses, depositions, court costs, and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided by this chapter. In such an action or proceeding the adjutant general, on the written request of the member involved, shall designate the state judge advocate general, a judge advocate, or a legal officer of the state military forces to represent the member. Judge advocates or legal officers performing duty under this subsection will be called to duty by order of the governor. If the military legal services, as provided above, are not available, the adjutant general, after consultation with the state judge advocate general and member involved, shall contract with a competent private attorney to conduct the representation.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 309, Sec. 12, eff. Sept. 1, 1999.

Sec. 432.185. REDRESS OF INJURIES TO PROPERTY. (a) If complaint is made to a commanding officer that wilful damage has been done to the property of any person or that a person's property has been wrongfully taken by members of the state military forces, the officer, subject to regulations the governor prescribes, may convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers, and for the purpose of that investigation, it may summon witnesses, examine them on oath or affirmation, receive depositions or other documentary evidence, and assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges authorized by this section is conclusive, except as provided by Subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belong.

(c) A person subject to this chapter who is accused of causing wilful damage to property has the rights to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned must be military counsel, provided by the commanding officer instituting this inquiry. The accused may also employ civilian counsel of his own choosing at his own expense. The accused has the right of appeal to the next higher commander.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.186. IMMUNITY FOR ACTION OF MILITARY COURTS. An accused may not bring an action or proceeding against the convening authority or a member of a military court, board convened under this

chapter or military regulations, or officer or person acting under the authority of a court or board or reviewing its proceedings because of the approval, imposition, or execution of a sentence, the imposition or collection of a fine or penalty, or the execution of a process or mandate of a military court, board convened under this chapter, or military regulation.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.187. DELEGATION OF AUTHORITY BY GOVERNOR. The governor may delegate any authority vested in him under this chapter and may provide for the subdelegation of this authority. The governor may not delegate the power given him by Section 432.093(d).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.188. EXECUTION OF PROCESS AND SENTENCE. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) If the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening 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 or in which the offense was committed, directing the sheriff to take the body of the sentenced person and confine him in the county jail of the county for the period named in the sentence, as approved, or until the sheriff is directed to release him by proper authority.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.189. PROCESS OF MILITARY COURTS. (a) A military court may issue any process or mandate necessary to carry into effect its powers. The court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records if it is sitting in the state and the witnesses, books, and records sought are also located in the state.

(b) A process or mandate may be issued by a summary court-martial, provost court, or the president of another military court and may be directed to and executed by a marshal of the military court or any peace officer. A process or mandate must be in the form prescribed by regulations issued under this chapter.

(c) All officers to whom process or mandates may be directed shall execute them and make return of their acts under the process or mandates according to the requirements of those documents. Except as otherwise specifically provided by this chapter, an officer may not demand or require payment of a fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection with the process or mandate.

(d) The president of a court-martial and any summary court officer may issue all necessary process, subpoenas, attachments, warrants, or arrest and warrant of commitment, under his hand, in the name of the state, and directed to a sheriff or constable, who shall serve or execute it in the same manner in which similar process issued by a magistrate is served or executed.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.190. PAYMENT OF FINES, COSTS, AND DISPOSITION THEREOF. (a) A fine or forfeiture imposed by general court-martial shall be paid to the officer ordering the court or to the officer commanding at that time. The officer, not later than the fifth day after the date of the payment's receipt, shall pay it to the adjutant general, who shall disburse it as he sees fit for military purposes.

(b) A fine or forfeiture imposed by a special or summary court-martial shall be paid to the officer ordering the court or the officer commanding at that time. The officer, not later than the fifth day after the date of the payment's receipt, shall place it to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) If the sentence of a court-martial adjudges a fine against a person and the fine has not been fully paid before the 11th day after the date of its confirmation, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or in which the offense was committed, directing him to take the body of the convicted person and confine him in the county jail for one day for a fine not exceeding \$1 and one additional day for every dollar

above that amount.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.191. PRESUMPTION OF JURISDICTION. The jurisdiction of the military courts and boards established by this chapter shall be presumed and the burden of proof rests on a person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.192. WITNESSES' EXPENSES. (a) Persons in the employ of this state but not belonging to its military forces if traveling on summons as witnesses before military courts, are entitled to round trip transportation between their place of residence and the place where the court is in session. If transportation is not furnished, they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route and to reimbursement of the actual cost of meals and rooms at a rate not to exceed \$25 a day for each actually and unavoidably consumed in travel or in attendance on the court under the order or summons. Allowance may not be made to them if attendance on court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to its active military forces, who has been duly summoned to appear as a witness before a military court, is entitled to receive \$50 a day for each day actually in attendance on the court, and 12 cents a mile for going from his place of residence to the place of trial or hearing, and 12 cents a mile for returning. Civilian witnesses will be paid by the adjutant general's department.

(c) The charges for return journeys of witnesses shall be made on the basis of the actual charges allowed for travel to the court, and the entire account thus completed in this manner shall be paid on discharge from attendance without waiting for completion of return travel.

(d) Fees may not be allowed to a person as witness fees, unless the person has been subpoenaed, attached, or recognized as a witness in the case.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.193. ARREST, BONDS, LAWS APPLICABLE. (a) If charges against a person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of the person, and a convening authority, believing that the charges can be sustained and that the person charged will not appear for trial or intends to flee from justice, may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or in which he is supposed to be, commanding the sheriff or constable to take the body of the charged person and confine him in jail until his case is finally disposed of. The sheriff or constable, on the order of the convening authority, shall bring the charged person before the court-martial for trial, or turn him over to whoever the order may direct. The convening authority issuing the warrant of arrest shall endorse on it the amount of bail to be required. It is a violation of duty on the part of a sheriff or constable to permit a committed person to remain out of jail, except that the sheriff or constable may, if the person desires it, permit the person to give bail in the sum endorsed on the warrant, conditioned for his appearance, from time to time, before the court-martial as he may be ordered for trial and until his case is finally disposed of or until he surrenders to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) On the failure of any person who has been admitted to bail conditioned for his appearance for trial before a court-martial, or on failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of the person, the court-martial shall certify the fact of the failure to appear to the convening authority, or to the officer commanding for the time being, as the case may be. The officer shall cause a judge advocate or district or county attorney to file suit in Travis County for the bail.

(c) The rules laid down in the Code of Criminal Procedure relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to it, and all other rules

of a general nature not inconsistent with this chapter are applicable to bail taken as provided by this chapter.

(d) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry, extend to every part of the state.

(e) If a lawful process, issued by the proper officer of a court-martial, comes to the hands of a sheriff or constable, the sheriff or constable shall perform the usual duties of that officer and perform all acts and duties imposed by this chapter or authorized to be performed by a sheriff or constable. Failure of a sheriff or constable to perform the duties required by this chapter is a misdemeanor punishable by a fine of not more than \$1,000 and by confinement of not less than six months nor more than 12 months in jail.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.194. EXPENSES OF ADMINISTRATION. The adjutant general may pay all expenses incurred in the administration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 432.109, 432.184, and 432.192, from any funds appropriated to the adjutant general's department.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 432.195. SHORT TITLE. This chapter may be cited as the Texas Code of Military Justice.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.