

MICHIGAN CODE OF MILITARY JUSTICE OF 1980 (EXCERPT)
Act 523 of 1980
Article 1

32.1001 Short title.

Sec. 1.

This act shall be known and may be cited as the "Michigan code of military justice of 1980".

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1002 Definitions.

Sec. 2.

As used in this act:

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

(b) "Active service" means service, active state service, or special duty required by law, regulation, or order of the governor. Active service includes the continuing obligations of active members of the national guard and the defense force by virtue of their commissions, appointments, or enlistments.

(c) "Active state duty" means the actual weekend, annual training, or special call up duty in the state military forces and includes travel to and from the duty site or station.

(d) "Active state service" means military service in support of civil authorities ordered by the governor or as provided by the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851.

(e) "Apprehension" means the taking of an individual into custody.

(f) "Cadet" means an individual who is enrolled in or attending a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces.

(g) "Commanding officer" includes only a commissioned officer.

(h) "Confinement" means the physical restraint of an individual.

(i) "Controlled substance" means opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, marihuana, any compound or derivative of any such substance, and any other substance that is listed in schedules I through V of 21 USC 812, including any subsequent amendments to that act.

(j) "Convening authority" includes either of the following:

(i) The person who convened the court.

(ii) A commissioned officer commanding for the time being or a successor in command to the convening authority.

(k) "Correctional custody" means the physical restraint of an individual during duty or nonduty while on active state duty and includes extra duty, fatigue duty, or hard labor.

(l) "Defense counsel" means a commissioned officer of the state military forces who is a member in good standing of the bar of this state and who is appointed to represent an accused in a proceeding under this code, or a civilian attorney who is a member in good standing of the bar of this state, retained at personal expense of the accused, if the accused elects nonmilitary representation.

(m) "Enlisted member" means an individual in an enlisted grade.

(n) "Extra duty" means a duty in addition to those normally assigned to the individual undergoing the punishment, and includes, but is not limited to, fatigue duty and military duty of any kind.

(o) "Fatigue duty" means labor of a nonmilitary kind, including, but not limited to, cleaning, digging, domestic duty, or other similar types of work.

(p) "Federal service" means military duty in the Armed Forces of the United States, including, without limitation, the Army National Guard of the United States and the Air National Guard of the United States, while subject to the uniform code of military justice, 10 USC 801 to 946a.

(q) "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 rule.

(r) "Judge advocate" means a commissioned officer of the state military forces who is a member in good standing of the bar of this state, and is either of the following:

(i) Certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a reserve component of the Army, Air Force, Navy, Marine Corps, or Coast Guard.

(ii) Certified as a nonfederally recognized judge advocate, under regulations adopted under this code, by the senior judge advocate of the commander of the force in the state military forces of which the accused is a member, as competent to perform such military justice duties required by this code, or, if no judge advocate described in this subparagraph is available, then that certification may be made by the senior judge advocate of the commander of another force in the state military forces as the convening authority directs.

(s) "Military" includes each component of the Armed Forces of the United States and each component of the state military establishment.

(t) "Military court" means a court-martial, a court of inquiry, or the military appeals tribunal.

(u) "Military judge" means an official of a general or special court-martial detailed in accordance with section 26.

(v) "Minor offense" means an offense under a punitive section of this code that a commanding officer considers minor.

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

(x) "Special victims' counsel" means a judge advocate designated as a special victims' counsel under 10 USC 1044e.

(y) "Staff judge advocate" means the commissioned officer responsible for supervising the administration of military justice within a command.

(z) "State staff judge advocate" means the commissioned officer responsible for supervising the administration of military justice in the state military forces.

(aa) "State military forces" means the national guard of this state, as that term is defined in 32 USC 101(3), and any other components of the state military establishment organized under the laws of this state.

(bb) "Summary court officer" means an official appointed pursuant to section 16(c) who is authorized to serve warrants.

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

(dd) "Unit" means a regularly organized body of the military.

(ee) "Victim of an offense under this code" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this code, or any other individual defined as a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

32.1003 Applicability; subject matter jurisdiction; convening and holding courts-martial and courts of inquiry out of state; offenses committed out of state; trial and punishment.

Sec. 3.

(1) This code applies to all members of the state military forces at all times, except when in federal service.

(2) This code applies to an individual subject to this code while serving out of state and while going to and returning from the service out of state to the same extent as an individual serving within this state.

(3) Subject matter jurisdiction is established if the individual subject to this code was on any type of duty status with the state military forces at the time of the offense, including travel to and from the duty site or station or, if the individual subject to this code was not on any type of duty status with the state military forces at the time of the offense, a nexus exists between the offense and the state military forces.

(4) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while serving out of state with the same jurisdiction and powers as if held within this state. Offenses committed out of state may be tried and punished either out of state or within this state.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

32.1004 Relieving person from trial by court-martial; limitation; trial by court-martial of person charged with fraudulently obtaining discharge; effect of conviction.

Sec. 4.

(1) Subject to the limitation of actions under section 43, a person who is subject to this code and charged with an offense under this code is not relieved from a trial by court-martial because his or her military service is terminated.

(2) Each person discharged from the state military forces who is later charged with having fraudulently obtained his or her discharge, except as provided in section 43, is subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in the custody of the military for that trial. Upon conviction of fraudulently obtaining a discharge, the person is subject to trial by court-martial for an offense under this code committed before the fraudulent discharge.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2005, Act 186, Imd. Eff. Oct. 27, 2005

32.1005 Application by dismissed officer for trial by court-martial; convening general court-martial; jurisdiction; waiver of right to plead statute of limitations; affirming dismissal; substituting discharge authorized for administrative issuance; reappointment of officer.

Sec. 5.

(1) If an officer, dismissed by order of the governor by reason of an alleged violation of this code, makes written application for trial by court-martial to the governor, setting forth, under oath, that he or she has been wrongfully dismissed, the governor within 6 months shall convene a general court-martial to try the officer on the charge on which the officer was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on the charge. The officer shall be held to have waived the right to plead any statute of limitations applicable to an offense with which the officer is charged. The court-martial, as a part of its sentence, may affirm the dismissal. However, if the court-martial acquits the accused or if the sentence, as finally approved or affirmed, does not include dismissal, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issuance.

(2) If the governor fails to convene a general court-martial within 6 months after the presentation of an application for trial under this section, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issuance.

(3) If a discharge is substituted for a dismissal under the authority of this section, the governor may reappoint the officer to the commissioned rank and precedence as in the opinion of the governor the former officer would have attained had the officer not been dismissed. The reappointment of the former officer may be made if a position vacancy is available under applicable tables of organization. The time between the dismissal and the reappointment shall be considered as service for all state purposes.

History: 1980, Act 523, Eff. Mar. 31, 1981

32.1006 State staff judge advocate; appointment; eligibility; inspections; communications; individual acting in court-martial case prohibited from acting as staff judge advocate or judge advocate to, or as a member of, reviewing authority or military appeals tribunal on same case.

Sec. 6.

(1) The adjutant general shall appoint an officer of the state military forces as state staff judge advocate. To be eligible for appointment, an officer must be licensed to practice law in this state, and have practiced law in this state for at least 5 years, and must be a commissioned officer of the rank of lieutenant colonel or higher in the judge

advocate general's corps.

(2) The state staff judge advocate or the state staff judge advocate's delegate shall make frequent inspections in the field in the supervision of the administration of military justice.

(3) Each convening authority shall communicate directly with its staff judge advocate or judge advocate in matters relating to the administration of military justice. The staff judge advocate or judge advocate of a command is entitled to communicate directly with the staff judge advocate or judge advocate of a superior or subordinate command, or with the state staff judge advocate.

(4) An individual who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in a court-martial case shall not act later as staff judge advocate or judge advocate to a reviewing authority or to the military appeals tribunal or be a member of a reviewing authority or a member of the military appeals tribunal on the same case.

History: 1980, Act 523, Eff. Mar. 31, 1981 ;-- Am. 2024, Act 77, Imd. Eff. July 8, 2024

32.1006a Victim rights; designation of representative; construction of section; appeals; procedures and protections; victim interviews.

Sec. 6a.

(1) A victim of an offense under this code has the rights conferred by state law in nonmilitary courts, including, but not limited to, all of the following:

- (a) The right to be reasonably protected from the accused.
- (b) The right to reasonable, accurate, and timely notice provided by military trial counsel of all of the following:
 - (i) A public hearing concerning the continuation of confinement before the trial of the accused.
 - (ii) An investigation under section 32.
 - (iii) A court-martial relating to the offense, including all related motions, hearings, pleas, sentencing hearings, alterations or suspensions, and all related filed documents.
 - (iv) A public proceeding of the service clemency and parole board relating to the offense.
 - (v) The release or escape of the accused, unless notice may endanger the safety of any individual.
- (c) The right to not be excluded from any public hearing or proceeding described in subdivision (b), unless the military judge or investigating officer under section 32, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this code would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (d) The right to be reasonably heard at all of the following:
 - (i) A public hearing concerning the continuation of confinement before the trial of the accused.
 - (ii) A sentencing hearing relating to the offense.
 - (iii) A proceeding involving clemency and parole related to the offense.
 - (iv) Any public military proceedings, including appeals, in connection with the victim's legal rights where those rights are implicated.
- (e) The reasonable right to confer beforehand with the counsel representing the government at a proceeding described in subdivision (b).
- (f) The right to receive full restitution before a forfeiture may be received by the military as provided by law.
- (g) The right to proceedings free from unreasonable delay.
- (h) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this code.

(2) If a victim of an offense under this code is under 18 years of age but is not a member of the military, or is incompetent, incapacitated, or deceased, the military judge shall designate a representative of the estate of the victim, a family member, or another suitable individual who must not be the accused to assume the victim's rights under this section.

- (3) This section shall not be construed to do any of the following:
 - (a) Authorize a cause of action for damages.
 - (b) Create, enlarge, or imply a duty or obligation to a victim of an offense under this code or other individual for breach of which this state or any of its officers or employees could be held liable for damages other than restitution.
 - (c) Impair the exercise of discretion under section 30 or 34.
 - (4) If the victim of an offense under this code believes that an investigating officer ruling under section 32 or a

court-martial ruling violates the rights of the victim afforded by a provision specified in subsection (7), the victim may file an interlocutory appeal to the military appeals tribunal, and an automatic stay of the military proceedings takes effect on the filing of the notice of appeal until final disposition of the appeal in order to require the investigating officer or the court-martial to comply with the provision.

(5) If the victim of an offense under this code is subject to an order to submit to a deposition, whether or not the victim is available to testify at the court-martial trying the accused for the offense, the victim may appeal that order in the same manner described in subsection (4) to the military appeals tribunal to quash the order.

(6) An appeal described in subsection (4) or (5) must be forwarded directly to the chairperson of the military appeals tribunal, by means that may be prescribed by the governor, and, to the extent practicable, must have priority over all other proceedings before the military appeals tribunal.

(7) Subsection (4) applies to the protections afforded by all of the following:

(a) This section.

(b) Section 32.

(c) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual behavior or predisposition.

(d) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(e) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(f) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(8) On notice by counsel for the government to counsel for the accused of the name of an alleged victim of an offense under this code whom counsel for the government intends to call as a witness at a proceeding under this code, counsel for the accused shall make any request to interview the victim through the special victims' counsel or other counsel for the victim, if applicable.

(9) If requested by an alleged victim who is subject to a request for interview under subsection (8), any interview of the victim by counsel for the accused must take place only in the presence of the counsel for the government, a counsel for the victim, or, if applicable, a victim advocate.

History: Add. 2024, Act 77, Imd. Eff. July 8, 2024