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SENATE BILL 02-099

BY SENATOR(S) Nichol, Entz, Isgar, Takis, Teck, Cairns, Andrews, Dyer, Epps, Fitz-Gerald, Gordon, Hagedorn, Hanna, Hillman, Lamborn, Matsunaka, May, McElhany, Phillips, Tate, Taylor, Thiebaut, and Tupa; also REPRESENTATIVE(S) Spradley, Coleman, Crane, Garcia, Grossman, Harvey, Hefley, Jahn, King, Mace, Marshall, Miller, Romanoff, Sanchez, Sinclair, Stafford, Stengel, Tochtrop, Veiga, Weddig, and Young.

CONCERNING THE UPDATING OF STATUTORY PROVISIONS REGARDING THE STATE MILITARY FORCES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 28-3-101, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

28-3-101. Definitions. As used in this article, unless the context otherwise requires:

(7) "SABOTEUR" MEANS A PERSON WHO INTENTIONALLY DESTROYS, DAMAGES, MOVES, OR INTERFERES WITH ANY PROPERTY WITH REASONABLE GROUNDS TO BELIEVE THAT THE ACT WILL INTERFERE WITH THE

PREPARATION OF THE UNITED STATES OR ANY STATE FOR DEFENSE OR FOR WAR OR WITH THE PROSECUTION OF WAR BY THE UNITED STATES.

(8) "TERRORIST" MEANS A PERSON WHO HAS ENGAGED IN, OR IS SUSPECTED OF ENGAGING IN, ACTS OF TERRORISM, AS THAT TERM IS DEFINED IN 18 U.S.C. SEC. 3077 (1), AS AMENDED.

SECTION 2. Repeal of provisions being relocated in this act.
28-3-102, Colorado Revised Statutes, is repealed.

SECTION 3. 28-3-103 (1), (2), and (7), Colorado Revised Statutes, are amended to read:

28-3-103. General provisions. (1) In case the United States is at war or in case of any other emergency declared by the president or the congress of the United States or by the governor or the general assembly of this state, any organization, unit, or detachment of the military forces of this state, by direction of the governor and upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, TERRORISTS, enemies, or enemy forces beyond the border of this state into another state until they are apprehended or captured by such organization, unit, or detachment or until the military or police forces of such other state or the forces of the United States have had a reasonable opportunity to pick up the pursuit or to apprehend or capture the persons pursued, if such other state has given authority by law for such pursuit by such forces of this state. Except as provided by law, any person who is apprehended or captured in another state by any of the forces of this state shall, without unnecessary delay, be surrendered to the military or police forces of the state in which he OR SHE is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

(2) Any military forces of another state who are in fresh pursuit of insurrectionists, saboteurs, TERRORISTS, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture the persons pursued, and the pursuing forces may arrest or capture such persons within this state while in fresh pursuit. Any such persons who are captured or arrested by

the military forces of such other state while in this state shall, without unnecessary delay, be surrendered to the military or police forces of this state to be dealt with according to law.

(7) The organized militia shall consist of the following:

(a) The federally recognized national guard; AND

(b) The state defense force. ~~which shall comprise all organized components of the militia, except the federally recognized national guard.~~

SECTION 4. 28-3-103 (9), Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

28-3-103. General provisions. (9) CONSISTENT WITH FEDERAL LAW, WOMEN MAY ENLIST IN THE STATE MILITARY FORCES IN THE SAME MANNER AS MEN AND SHALL BE APPOINTED BY THE GOVERNOR IN THE SAME MANNER AS MEN. WHILE SO SERVING IN THE STATE MILITARY FORCES, WOMEN SHALL HAVE THE SAME STATUS AS MALE MEMBERS OF THE STATE MILITARY FORCES, CONSISTENT WITH FEDERAL LAW.

SECTION 5. 28-3-104, Colorado Revised Statutes, is amended to read:

28-3-104. Commander in chief - staff. The governor shall be the commander in chief of the military forces except so much thereof as may be in the actual service of the United States and may employ the same for the defense or relief of the state, the enforcement of its laws, ~~and~~ the protection of life and property therein, THE IMPLEMENTATION OF THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT, AND FOR THE TRAINING OF THE MILITARY FORCES FOR ALL APPROPRIATE STATE MISSIONS. He shall make and publish regulations not inconsistent with law and enforce the provisions of this article. He may appoint a staff, consisting of an adjutant general as chief of staff and such other officers as he deems necessary if all such officers are federally recognized officers in their respective ranks in the national guard of the state.

SECTION 6. 24-4-102 (3), Colorado Revised Statutes, is amended to read:

24-4-102. Definitions. As used in this article, unless the context

otherwise requires:

(3) "Agency" means any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except:

(a) State educational institutions administered pursuant to title 23 (except articles 8 and 9, parts 2 and 3 of article 21, and parts 2 to 4 of article 30), C.R.S.; and

(b) THE COLORADO LAW ENFORCEMENT TRAINING ACADEMY CREATED IN part 3 of article 33.5 of this title; AND

(c) THE ADJUTANT GENERAL OF THE NATIONAL GUARD, WHOSE POWERS AND DUTIES ARE SET FORTH IN SECTION 28-3-106, C.R.S.

SECTION 7. 28-3-106 (1) (j) and (1) (p), Colorado Revised Statutes, are amended to read:

28-3-106. Powers and duties of adjutant general. (1) The adjutant general has the following powers and duties:

(j) He OR SHE shall prescribe such regulations not inconsistent with law as will increase the discipline and efficiency and will preserve and protect the property of the military forces of the state of Colorado. These regulations, as prepared by the adjutant general and approved by the governor, shall be published in orders, and the governor, when in his OR HER judgment it is necessary, may order the adjutant general to revise and amend these regulations. THE REGULATIONS REQUIRED BY THIS PARAGRAPH (j) NEED NOT COMPLY WITH THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.

(p) He OR SHE shall employ such clerks, laborers, and other force as may be required for his OR HER office, other departments, armories, and properties of the national guard, and, in all cases of employment under this provision, a preference shall be extended to members of the national guard. The pay of such clerks and other force shall be determined and fixed by the adjutant general with the approval of the governor AND CONSISTENT WITH THE PAY FOR EQUIVALENT POSITIONS UNDER THE STATE PERSONNEL SYSTEM. In case of emergency or when authorized by the governor, he OR SHE may employ such additional temporary assistants as are necessary, to be paid

from the amounts appropriated for the maintenance of the military forces.

SECTION 8. 28-3-315, Colorado Revised Statutes, is amended to read:

28-3-315. Retired officers - warrant officers - limited assignments. The commander in chief may assign officers AND WARRANT OFFICERS on the retired list to STATE active duty in recruiting, to serve upon courts-martial, courts of inquiry and board, to staff duty not involving service with troops, OR to be in charge of a military reservation left temporarily without officers, OR TO SUCH OTHER DUTIES AS THE ADJUTANT GENERAL MAY DESIGNATE. Such officers AND WARRANT OFFICERS while so assigned shall receive the full pay and allowances of their grades at time of retirement OR MAY SERVE IN A VOLUNTEER UNPAID STATUS.

SECTION 9. 28-3-406, Colorado Revised Statutes, is amended to read:

28-3-406. Exemption from arrest or civil process. No member of the national guard shall be arrested or served with any summons, order, warrant, or other civil process after having been ordered to any duty or while going to, attending, or returning from any place to which he OR SHE is required to go for military duty; but nothing in this article shall prevent his OR HER arrest by order of a military officer or for a ~~felony or breach of the peace~~ CRIME committed while not in actual performance of his OR HER duty. The articles of military equipment personally owned by such members shall be exempt from seizure or sale for debt PURSUANT TO SECTION 13-54-102, C.R.S.

SECTION 10. Part 4 of article 3 of title 28, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

28-3-407. Retired non-commissioned officers - limited assignments. THE COMMANDER IN CHIEF MAY ASSIGN NON-COMMISSIONED OFFICERS ON THE RETIRED LIST TO STATE ACTIVE DUTY IN RECRUITING, TO SERVE UPON COURTS-MARTIAL, COURTS OF INQUIRY AND BOARD, TO STAFF DUTY NOT INVOLVING SERVICE WITH TROOPS, TO BE IN CHARGE OF A MILITARY RESERVATION LEFT TEMPORARILY WITHOUT OFFICERS, OR TO SUCH OTHER DUTIES AS THE ADJUTANT GENERAL MAY DESIGNATE. SUCH NON-COMMISSIONED OFFICERS WHILE SO ASSIGNED SHALL RECEIVE THE FULL

PAY AND ALLOWANCES OF THEIR GRADES AT TIME OF RETIREMENT OR MAY SERVE IN A VOLUNTEER UNPAID STATUS.

SECTION 11. 13-54-102 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

13-54-102. Property exempt. (1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(h.5) THE ARTICLES OF MILITARY EQUIPMENT PERSONALLY OWNED BY MEMBERS OF THE NATIONAL GUARD;

SECTION 12. 28-3-505, Colorado Revised Statutes, is amended to read:

28-3-505. Discrimination - public places and common carriers - penalty. It is unlawful for any common carrier, innkeeper, proprietor, or lessee of any place of public amusement or entertainment or any agent, servant, or representative of any such common carrier, innkeeper, proprietor, or lessee as aforesaid to bar from the full and equal enjoyment of the accommodations, advantages, facilities, or privileges of any public conveyance or any inn or of any place of public amusement or entertainment any person in the service of the armed forces of the United States or of the national guard, wearing the uniform prescribed for him OR HER at that time or place by law, regulation of the service, or custom, on account of his OR HER wearing such uniform or of his OR HER being in such service. Any person who is barred from such enjoyment contrary to the provisions contained in this section is entitled to recover in an action against any corporation, association, or person guilty of WHO COMMITS such violation his OR HER actual damages and ~~one~~ THREE hundred dollars in addition thereto AND REASONABLE ATTORNEY FEES AND COSTS. Evidence that such person barred was at the time sober, orderly, and willing to pay for such enjoyment in accordance with rates affixed therefor for civilians shall be prima facie evidence that he OR SHE was barred on account of his OR HER wearing such uniform or of his OR HER being in such service.

SECTION 13. 28-3-506, Colorado Revised Statutes, is amended to read:

28-3-506. Discrimination against employment - penalty.

(1) (a) No person shall discriminate against any officer or enlisted ~~man~~ PERSON of the military forces of the state because of ~~his~~ THE OFFICER OR ENLISTED PERSON'S membership therein.

(b) No employer or officer or agent of any corporation, company, or firm or other person shall:

(I) Refuse to hire any person for or discharge any person from employment because of ~~his being~~ THE PERSON'S STATUS AS an officer or enlisted ~~man~~ PERSON of the military forces of the state; or

(II) Hinder or prevent ~~him~~ THE PERSON from performing any military service he OR SHE may be called upon to perform by proper authority; or

(III) Dissuade any person from enlistment in the said national guard by threat or injury to ~~him~~ SUCH PERSON, if he OR SHE so enlists, in respect to ~~his~~ THE PERSON'S employment, trade, or business.

(2) Any person violating any of the provisions of SUBSECTION(1) OF this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five ~~hundred~~ THOUSAND dollars. IN ADDITION, THE AGGRIEVED PERSON MAY BRING AN ACTION AT LAW FOR DAMAGES FOR SUCH NONCOMPLIANCE OR APPLY TO THE DISTRICT COURT FOR SUCH EQUITABLE RELIEF AS IS JUST AND PROPER UNDER THE CIRCUMSTANCES.

SECTION 14. 28-3-507, Colorado Revised Statutes, is amended to read:

28-3-507. Interference with duty - arrest - penalty. Any person who ~~interrupts, molests, or insults by abusive words or behavior or~~ obstructs any officer or enlisted ~~man~~ OR INTERFERES WITH A MEMBER of the national guard ~~while on duty~~ IN THE PERFORMANCE OF HIS OR HER DUTY may be ~~immediately put and kept~~ PLACED under guard by the officer in command. ~~until the duty is concluded~~. AS SOON AS POSSIBLE, such officer ~~may~~ SHALL EITHER RELEASE SUCH PERSON OR turn him OR HER over to any peace officer of the city or place where such duty is being performed, and such peace officer shall thereupon deliver such offender for examination and trial before any court having jurisdiction. Any person violating the

provisions of this section is guilty of a CLASS 3 misdemeanor. ~~and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars and by imprisonment in the county jail for not more than ninety days.~~

SECTION 15. 28-3-611, Colorado Revised Statutes, is amended to read:

28-3-611. Employer's noncompliance - actions. ANY EMPLOYER VIOLATING ANY OF THE PROVISIONS OF THIS PART 6 IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS. ~~If any employer fails to comply with the foregoing, IN ADDITION, the employee may at his election, bring an action at law for damages AND REASONABLE ATTORNEY FEES for such noncompliance or apply to the district court for such equitable relief AND REASONABLE ATTORNEY FEES as is ARE just and proper under the circumstances.~~

SECTION 16. Part 6 of article 3 of title 28, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

28-3-612. Federal law - rights - applicability. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS RESTRICTING OR ABROGATING ANY RIGHT AVAILABLE TO ANY OFFICER OR ENLISTED PERSON OF THE MILITARY FORCES OF THE STATE UNDER THE FEDERAL "UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT", 38 U.S.C. SEC. 4301 ET SEQ.

SECTION 17. 28-3-802 (2), Colorado Revised Statutes, is amended to read:

28-3-802. Unit funds. (2) There is authorized to be deposited in each unit fund such moneys as may be received from gifts, bequests, contributions, including federal contributions, and such amounts as may be appropriated to such unit funds from the general fund of the state of Colorado. ~~not to exceed the amount of five dollars per man in the unit for any fiscal year.~~

SECTION 18. 28-4-102 (1) and (2), Colorado Revised Statutes, are amended, and the said 28-4-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

28-4-102. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Active duty"~~ means that duty which might require duty or service at any time in any twenty-four-hour day, such service to be continuous and exclusive for the state defense force, when required or necessary.

(2) ~~"National guard"~~ includes the Colorado national guard and the national guard of the United States for Colorado.

(3) "SABOTEUR" MEANS A PERSON WHO INTENTIONALLY DESTROYS, DAMAGES, MOVES, OR INTERFERES WITH ANY PROPERTY WITH REASONABLE GROUNDS TO BELIEVE THAT THE ACT WILL INTERFERE WITH THE PREPARATION OF THE UNITED STATES OR ANY STATE FOR DEFENSE OR FOR WAR OR WITH THE PROSECUTION OF WAR BY THE UNITED STATES.

(4) "STATE DEFENSE FORCE" MEANS THE ORGANIZED MILITARY FORCE OF THE STATE OF COLORADO OTHER THAN THE ARMY NATIONAL GUARD OR AIR NATIONAL GUARD AND EXISTING AS A DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS PURSUANT TO SECTION 24-1-127 (3) (d), C.R.S.

(5) "STATE DEFENSE FORCE ACTIVE DUTY" MEANS THAT DUTY PERFORMED BY INDIVIDUALS PURSUANT TO THIS ARTICLE.

(6) "TERRORIST" MEANS A PERSON WHO HAS ENGAGED IN, OR IS SUSPECTED OF ENGAGING IN, ACTS OF TERRORISM, AS THAT TERM IS DEFINED IN 18 U.S.C. SEC. 3077 (1), AS AMENDED.

SECTION 19. Article 4 of title 28, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

28-4-103.5. [Formerly 28-3-102] Persons subject to military duty - state defense force. (1) Every able-bodied male citizen of Colorado and those who have declared their intention to become citizens of the United States residing therein between the ages of eighteen and forty-five SIXTY-FOUR years, except persons exempt by law, are subject to military duty IN THE STATE DEFENSE FORCE. ~~The governor may, when he deems it necessary for the defense of the state, extend the maximum age for military service to not more than sixty-four years.~~ However, the following persons or classes of persons are exempted from military service:

- (a) Persons exempt by any statute of this state;
- (b) The members of any regularly organized fire or police department of any city, COUNTY, city and county, or town if such members are on full-time duty with the fire or police departments or if such members are found by the governor to be necessary for the health, welfare, or protection of the community;
- (c) Those permanently disqualified for military service because of physical disability and having in their possession a certificate of some reputable LICENSED physician or surgeon which describes the nature thereof;
- (d) Justices, JUDGES, and clerks of courts of record, CLERKS OF MUNICIPAL COURTS, county clerks and recorders, sheriffs, AND ministers of the gospel;
- (e) Practicing physicians, officers and assistants of hospitals, prisons, and jails whose services are declared by the governor to be necessary for the general health, welfare, or protection of the community;
- (f) Persons determined to be mentally incompetent ~~and felons convicted of infamous crimes~~ BY A COURT OF COMPETENT JURISDICTION AND PERSONS CONVICTED OF A FELONY and not pardoned;
- (g) All persons who because of religious beliefs claim exemption from military service, if the conscientious holding of such belief by such persons is established under such regulations as the governor prescribes. Such persons shall be exempted from military service in a combat capacity, but no person so exempted shall be exempt from military service in any capacity which the governor declares to be noncombatant.

SECTION 20. 28-4-104, Colorado Revised Statutes, is amended to read:

28-4-104. State defense force - composition. The governor is authorized to organize and maintain within this state under such regulations as the secretary of defense of the United States may prescribe for discipline in training, such military forces as the governor deems necessary to defend this state. Such forces shall be KNOWN AS THE STATE DEFENSE FORCE AND SHALL BE composed of such citizens of the state as shall volunteer OR BE ORDERED BY THE GOVERNOR and qualify for service therein. Such forces shall be additional to and distinct from the national guard. and shall be known as the Colorado state defense force. In time of peace, The Colorado state defense force shall be maintained in numbers to be determined by the governor. In time of national emergency, the Colorado state defense force shall be recognized as and shall constitute the organized militia of and for the state of Colorado while any part of the national guard of this state is in active federal service. Members of the Colorado state defense force shall be allowed and given credit for time served in a military organization of the state to the same extent and on the identical basis as such credit for military service was allowed and given the members of the Colorado national guard prior to the time of induction into federal military service. No officer or enlisted man PERSON of this force shall be a member of the federalized national guard or other armed force of the United States. Such part of this force as ordered by the governor shall be uniformed. Any part or all of this force may be called to STATE DEFENSE FORCE active duty at the pleasure of the governor. ALL COSTS AND EXPENSES OF THE STATE DEFENSE FORCE SHALL BE PAID FROM THE GENERAL FUND BY SEPARATE APPROPRIATION TO THE DEPARTMENT OF MILITARY AFFAIRS.

SECTION 21. 28-4-105, Colorado Revised Statutes, is amended to read:

28-4-105. Organization - rules and regulations. The governor is authorized to prescribe the strength, branch of service, and rules and regulations not inconsistent with the provisions of this article governing the enlistment age of members of the force and governing the organization, physical requirements, administration, equipment, maintenance, training, and discipline of such force. Such rules and regulations, insofar as he OR SHE deems practicable and desirable, shall conform to the existing law governing and pertaining to the national guard and the rules and regulations

promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by any member of such force from any individual, firm, association, or corporation by reason of his OR HER membership; except that it is permissible for common carriers, such as AIRLINES, railroads and bus lines, to carry members of such force without charge or at a reduced rate. The Colorado state defense force shall be commanded by the senior officer holding a state commission in the Colorado state defense force. He OR SHE shall be designated by the ~~governor~~ ADJUTANT GENERAL as the commanding officer of the Colorado state defense force. All the rights, powers, privileges, benefits, and emoluments created or existing by virtue of state laws, customs, or regulations heretofore had or enjoyed by the members of the Colorado national guard shall be conferred upon and vested in the members of the Colorado state defense force. All the duties and responsibilities imposed upon and demanded of the members of the Colorado national guard by the state laws, customs, or regulations are imposed upon and may be demanded of the members of the Colorado state defense force.

SECTION 22. 28-4-106, Colorado Revised Statutes, is amended to read:

28-4-106. Pay - members - employees of state. All officers and enlisted ~~men~~ PERSONS of the Colorado state defense force when on STATE DEFENSE FORCE active duty by order of the governor shall receive the same pay and allowances as are paid to officers and enlisted ~~men~~ PERSONS of like rank or grade in the army of the United States. OFFICERS AND ENLISTED PERSONS MAY ALSO VOLUNTARILY PERFORM STATE DEFENSE FORCE ACTIVE DUTY IN AN UNPAID VOLUNTEER STATUS. REGARDLESS OF PAY STATUS, the officers and enlisted ~~men~~ PERSONS of the Colorado state defense force shall be construed to be employees of the state of Colorado, and, in the event that any such officer or enlisted ~~man~~ PERSON incurs injuries or becomes sick, diseased, or deceased while on active duty under orders of the governor of the state of Colorado, he OR SHE shall be entitled to all of the benefits of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., accruing to employees of the state of Colorado.

SECTION 23. 28-4-108, Colorado Revised Statutes, is amended to read:

28-4-108. Service outside state. (1) Such forces shall not be

required to serve outside the boundaries of the state except that:

(a) Upon the request of the governor of another state, the governor of this state, in his OR HER discretion, may order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. These forces may be recalled by the governor at his OR HER discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, TERRORISTS, enemies, or enemy forces beyond the borders of this state into another state until such are apprehended or captured by such organization, unit, or detachment or until the military or police forces of the other state or forces of the United States have had an opportunity to take up the pursuit or to apprehend or capture such persons, if such other state has given authority by law for such pursuit by the forces of this state. Any such person who is apprehended or captured in such other state by an organization, unit, or detachment of the forces of this state, without unnecessary delay, shall be surrendered to the military or police forces of the state in which he OR SHE is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

SECTION 24. 28-4-109, Colorado Revised Statutes, is amended to read:

28-4-109. Forces of other states - privilege. Any military forces or organizations, units, or detachments thereof of another state who are in fresh pursuit of insurrectionists, saboteurs, TERRORISTS, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons within this state while in fresh pursuit. Any such person who is captured or arrested by the military forces of such other state while in this state, without unnecessary delay, shall be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful, and nothing contained in this section shall be deemed to repeal any of the provisions of sections 16-3-104 and 16-3-106, C.R.S.

SECTION 25. 28-4-114, Colorado Revised statutes, is amended to read:

28-4-114. Enlistment period - oath. No person shall be enlisted for more than one year, but such enlistment may be renewed. THE PERIOD OF ENLISTMENT SHALL BE AS SPECIFIED IN DEPARTMENT OF MILITARY AFFAIRS POLICIES AND PROCEDURES. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlisted men AND WOMEN of the national guard, substituting the words "Colorado state defense force" where necessary.

SECTION 26. 28-4-115, Colorado Revised Statutes, is amended to read:

28-4-115. Articles of war. (1) When such force or any part thereof is ordered out for active duty or service, the articles of war of the United States applicable to members of the national guard of this state in relation to courts-martial, their jurisdiction and the limits of punishment, and the rules and regulations prescribed thereunder shall be in full force and effect with respect to the Colorado state defense force.

(2) No officer or enlisted ~~man~~ PERSON of such force shall be arrested on any warrant ~~except for treason or felony~~, while going to, remaining at, or returning from a place where he OR SHE is ordered to attend military duty; EXCEPT THAT NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PREVENT THAT PERSON'S ARREST BY ORDER OF A MILITARY OFFICER OR FOR A CRIME COMMITTED WHILE NOT IN ACTUAL PERFORMANCE OF THAT PERSON'S STATE DEFENSE FORCE ACTIVE DUTY. Every officer and enlisted ~~man~~ PERSON of such force, during his OR HER service therein, shall be exempt from service upon any posse comitatus and from jury duty.

(3) WHEN ANY MEMBER OF THE STATE DEFENSE FORCE IS ON STATE DEFENSE FORCE ACTIVE DUTY, WHETHER IN PAID OR VOLUNTEER STATUS, THE INDIVIDUAL IS SUBJECT TO THE PROVISIONS OF THE "COLORADO CODE OF MILITARY JUSTICE", AS SET FORTH IN ARTICLE 3.1 OF THIS TITLE.

SECTION 27. 28-3-104, Colorado Revised Statutes, is amended to read:

28-3-104. Commander in chief - staff. The governor shall be the commander in chief of the military forces except so much thereof as may be in the actual service of the United States and may employ the same for the defense or relief of the state, the enforcement of its laws, and the protection of life and property therein. He OR SHE shall make and publish regulations not inconsistent with law and enforce the provisions of this article. He OR SHE may appoint a staff, consisting of an adjutant general as chief of staff and such other officers as he OR SHE deems necessary if all such officers are federally recognized officers in their respective ranks in the national guard of the state.

SECTION 28. 28-3-105 (1), (2), and (4), Colorado Revised Statutes, are amended to read:

28-3-105. Adjutant general - assistants. (1) There shall be an adjutant general of the state who shall be appointed by the governor, with the advice and consent of the senate, who shall be a staff officer, who at the time of appointment shall be a commissioned officer of the national guard of this state with not less FEWER than ten years' military service in the armed forces of this state or of the United States at least five of which have been commissioned service in the Colorado national guard, and who has attained the grade of lieutenant colonel or a higher grade with federal recognition in such grade at least one year prior to his OR HER appointment as adjutant general. The adjutant general shall serve at the pleasure of the governor.

(2) The adjutant general shall be appointed to the rank of brigadier general or to such higher grade or rank as he OR SHE may be federally recognized in.

(4) He OR SHE may appoint an assistant adjutant general, a state quartermaster, and necessary administrative and clerical assistants.

SECTION 29. 28-3-106 (1) (b), (1) (d), (1) (e), (1) (f), (1) (g), (1) (h), (1) (i), (1) (k), (1) (l), (1) (m), (1) (n), (1) (q), and (1) (u), Colorado Revised Statutes, are amended to read:

28-3-106. Powers and duties of adjutant general. (1) The adjutant general has the following powers and duties:

(b) He OR SHE shall have custody of all military records, correspondence, and other military documents. He OR SHE shall be the medium of military correspondence with the governor and perform all other duties pertaining to his OR HER office prescribed by law.

(d) He OR SHE shall make and transmit to the federal government such reports and returns as are required by the laws of the United States.

(e) He OR SHE shall, when necessary and pursuant to the provisions of section 24-1-136, C.R.S., cause the military code, orders, and regulations of the state to be reproduced and distributed to the commissioned officers and the several organizations of the national guard.

(f) He OR SHE shall cause to be prepared and issued all necessary books, blanks, and notices required to carry into full effect the provisions of the military code. All such books and blanks are the property of the state.

(g) The seal of office of the adjutant general shall contain the coat of arms of the state with the words added thereto "State of Colorado, Adjutant General's Office", and said seal shall be delivered by him OR HER to his OR HER successor. All orders issued from his OR HER office shall be authenticated with his SAID seal. The adjutant general shall attest to all commissions issued to officers of the military forces.

(h) He OR SHE shall superintend the preparation of all returns and reports required by the United States from the state on military matters.

(i) In the absence of the adjutant general or temporary inability to perform his OR HER duties as adjutant general, he OR SHE shall appoint, with the consent of the governor, an officer of the national guard to perform the duties prescribed for the adjutant general. Should the adjutant general be absent or unable to perform his OR HER duties for a period of six months or more, it shall be considered cause to justify his OR HER removal. Removal under this paragraph (i) shall be at the sole discretion of the governor.

(k) He OR SHE shall submit a budget respecting the military forces for the ensuing fiscal year for the approval of the controller, and the total of the budget for such period of time shall not be exceeded.

(l) He OR SHE shall keep the papers, volumes, and records of the

department in an office provided by the state and shall keep such accounts of activities and expenditures as are necessary and required.

(m) He OR SHE shall attend to the safekeeping and repairing of the ordnance, arms, accouterments, equipment, and all other military property belonging to the state or issued to it by the United States. All military property of the state which, after proper inspection, is found unsuitable for the use of the state, under the direction of the governor, shall be disposed of by the adjutant general at public auction or by inviting bids after suitable advertisement of the sale daily for ten days in at least one newspaper published in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor or, with the approval of the governor, may be turned over to any other department, board, or commission of the state government by which it can be used. Such department, board, or commission of the state government shall reimburse the military fund for the reasonable value of the property so received. He OR SHE shall bid on the property or suspend the sale when in his OR HER opinion better prices may or should be obtained. He OR SHE shall from time to time render to the governor a just and true account of the sales made by him OR HER and shall deposit the proceeds of the same in the military fund.

(n) He OR SHE shall not issue or cause to be issued military property to persons or organizations other than those belonging to the national guard, except in cases of emergency and then only on written approval of the governor.

(q) The adjutant general shall have charge of the campgrounds and military reservations of the state and shall be responsible for the protection and safety thereof, and he OR SHE shall promulgate regulations for the maintenance of order thereon, for the enforcement of traffic rules, and for all other lawful regulations as may be ordered for the operation, care, and preservation of existing facilities and installations on all state military reservations. He OR SHE shall keep in repair all state buildings and other improvements thereon. He OR SHE may make such sound improvements thereon as the good of the service requires.

(u) He OR SHE shall prescribe the rules and regulations described in section 23-5-111.4 (7), C.R.S.

SECTION 30. 28-3-301, Colorado Revised Statutes, is amended to

read:

28-3-301. State staff - number and grades. The state headquarters shall contain a staff and detachment and shall be divided into a department of the army and a department of the air force. Each department shall be commanded by an officer of the Colorado national guard. Said officer may be appointed by the governor to the rank of brigadier general or to such higher rank in which he OR SHE may be federally recognized. The number and grades of all other officers and enlisted men AND WOMEN in the state staff and detachment shall be as prescribed by federal or state law, but, in case of war, invasion, insurrection, riot, or imminent danger of any such emergency, the governor may temporarily increase such forces to meet such emergency, and retired officers who are physically qualified may be assigned to such duty.

SECTION 31. 28-3-304, Colorado Revised Statutes, is amended to read:

28-3-304. Commissions - examinations - assignments. Any person appointed, promoted, and commissioned on or after April 14, 1955, as an officer of the national guard shall successively pass such examinations and tests as to his OR HER physical, moral, and professional fitness as are prescribed by federal law. Officers shall be commissioned by the governor, and the commissions shall designate the armed service, staff corps, or department in which they are appointed. They will be assigned to duty within each organization by the immediate commander thereof.

SECTION 32. 28-3-306, Colorado Revised Statutes, is amended to read:

28-3-306. Federal duty as continuous service. Service by any person in the United States volunteers or in any of the armed forces of the United States in time of war, insurrection, or rebellion shall be considered as continuous service in the national guard for all purposes regarding privileges and exemptions provided by law for members of the national guard, by enlistment or commission, but the continuous service for an officer shall include only the time he OR SHE was commissioned as such.

SECTION 33. 28-3-307, Colorado Revised Statutes, is amended to read:

28-3-307. Supplies - indemnity bonds - depots. Arms, ammunition, equipment, and stores shall be issued to the proper officers of each organization upon requisition as prescribed by federal law. The governor may require of the accountable officers such bonds as he OR SHE deems necessary for securing the care and safety of property so issued and shall allow them sufficient money to insure such property against fire when so required by the federal government. He OR SHE may also allow them sufficient money to establish and maintain depots approved by him OR HER and to pay for transportation, handling, and care of such property, which allowance shall be paid out of the moneys appropriated or designated for the purchase of supplies for the national guard. The adjutant general, with the approval of the governor, shall obtain and pay for, out of the military fund, an adequate indemnity bond covering all of the officers of the national guard responsible for moneys and military property.

SECTION 34. 28-3-313, Colorado Revised Statutes, is amended to read:

28-3-313. Termination of commission - recall. Commissions of national guard officers shall be terminated as provided by federal law, but, in time of war or other declared emergency, any officer who reaches retirement age may, in the discretion of the commander in chief, on the recommendation of the adjutant general, be continued in the active service of the state defense force in his OR HER then grade and assignment for the duration of the war or emergency and for six months thereafter.

SECTION 35. 28-3-314, Colorado Revised Statutes, is amended to read:

28-3-314. Roll of retired officers. Any commissioned officer of the national guard who resigns or is retired and who has served as such officer for a period of not less than fifteen years, and any commissioned officer of the national guard who has been honorably discharged from any of the armed forces of the United States after serving therein for a period of ninety days or more during any war and who has served as such officer of the national guard for a period of not less than ten years, and any commissioned officer of the national guard who becomes disabled and thereby incapable of performing the duties of his OR HER office shall, upon his retirement, have his OR HER name placed on a roll in the office of the adjutant general to be known as the "roll of retired officers" and is thereby entitled to wear,

when not in conflict with federal law, on state or other occasions of ceremony, the uniform of the rank last held by him OR HER.

SECTION 36. 28-3-401, Colorado Revised Statutes, is amended to read:

28-3-401. Enlistment periods - extensions. Except as otherwise provided in this article or by federal law, original enlistments in the military forces shall be for a period of three years and subsequent enlistments for a period of one or three years. The governor may by order fix shorter periods of enlistment or reenlistment for any of the military forces so far as not inconsistent with federal law. In the event of any emergency wherein the governor has called out any of the military forces, he OR SHE may by order extend, for not exceeding the period of emergency and sixty days thereafter, the period of any enlistment in the forces called out which would otherwise expire.

SECTION 37. 28-3-404, Colorado Revised Statutes, is amended to read:

28-3-404. Honorable discharge. An enlisted man PERSON discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is prescribed by federal law, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the federal authorities may prescribe.

SECTION 38. 28-3-501, Colorado Revised Statutes, is amended to read:

28-3-501. Nonliability for official acts. The commanding officer of any of the military forces engaged in the suppression of an insurrection, the dispersion of a mob, or the enforcement of the laws shall exercise his OR HER discretion as to the propriety of firing upon or otherwise attacking any mob or other unlawful assembly; and, if he OR SHE exercises his OR HER honest judgment thereon, he OR SHE shall not be liable in either a civil or a criminal action for any act done while on such duty. No officer or enlisted man PERSON shall be held liable in either a civil or criminal action for any act done under lawful orders and in the performance of his OR HER duty.

SECTION 39. 28-3-502, Colorado Revised Statutes, is amended to read:

28-3-502. Actions against military personnel - defense counsel.

If a suit or proceeding is commenced in any court by any person against any officer of the military forces for any act done by such officer in his OR HER official capacity in the discharge of any duty under this article, or against any enlisted ~~man~~ PERSON acting under the authority or order of any such officer, or by virtue of any warrant issued by him OR HER pursuant to law, it is the duty of the governor, upon the recommendation of the attorney general, to appoint counsel to defend such person. The cost and expenses of any such defense shall be paid out of the military fund.

SECTION 40. 28-3-503, Colorado Revised Statutes, is amended to read:

28-3-503. Actions against military personnel - cost bond. Any person bringing an action or proceeding against a military officer of the state for any act done in the course of his OR HER official duty or against any person acting under the order or authority of such officer shall give security for the costs, disbursements, and reasonable ~~attorney's fee~~ ATTORNEY FEES incurred by the state or defendant in defending the same in the same manner and subject to the same regulations, so far as applicable, as in the case of a nonresident plaintiff, and, if the plaintiff fails to recover, such ~~attorney's fee~~ ATTORNEY FEES may be taxed with the costs and disbursements and judgment therefor entered against him OR HER and his OR HER sureties on the bond.

SECTION 41. 28-3-601, Colorado Revised Statutes, is amended to read:

28-3-601. Public employees - annual military leave. (1) Subject to the conditions prescribed in sections 28-3-601 to 28-3-607, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who is a member of the national guard or any other component of the military forces of the state organized or constituted under state or federal law or who is a member of the reserve forces of the United States, organized or constituted under federal law is entitled to leave of absence from his OR HER public office or employment without loss of pay, seniority, status, efficiency rating,

vacation, sick leave, or other benefits for all the time when he OR SHE is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding fifteen days in any calendar year. Such leave shall be allowed if the required military service is satisfactorily performed, which shall be presumed unless the contrary is established.

(2) Such leave shall not be allowed unless the officer or employee returns to his OR HER public position immediately on being relieved from such military service and not later than the expiration of the time limited in subsection (1) of this section for such leave, or is prevented from so returning by physical or mental disability or other cause not due to his OR HER own fault, or is required by proper authority to continue in such military service beyond the time limited in subsection (1) of this section for such leave.

SECTION 42. 28-3-602, Colorado Revised Statutes, is amended to read:

28-3-602. Public employees - extended military leave. If any such officer or employee is required by proper authority to continue in such military service beyond the time for which leave with pay is allowed, he OR SHE is entitled to leave of absence from his OR HER public office or employment without pay for all such additional service with right of reinstatement thereafter upon the same conditions as provided in section 28-3-604 for reinstatement after active service in time of war or other emergency.

SECTION 43. 28-3-603, Colorado Revised Statutes, is amended to read:

28-3-603. Public employees - emergency military leave. Subject to the conditions prescribed in this section, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who engages in active military service in time of war or other emergency declared by proper authority of the state or the United States, for which leave is not otherwise allowed by law, is entitled to leave of absence from his OR HER public office or employment without pay during such service with right of reinstatement as provided in section 28-3-604.

SECTION 44. The introductory portion to 28-3-604 (1) and 28-3-604 (1) (b), (1) (c), (1) (d), and (2), Colorado Revised Statutes, are amended to read:

28-3-604. Reinstatement. (1) Except as otherwise provided in sections 28-3-601 to 28-3-607, upon the completion of such service, such officer or employee shall be reinstated in the public position which he OR SHE held at the time of entry into such service or a public position of like seniority, status, and pay if such is available at the same salary which he OR SHE would have received if he OR SHE had not taken such leave upon the following conditions:

(b) That he OR SHE is not physically or mentally disabled from performing the duties of such position;

(c) That he OR SHE makes written application for reinstatement to the appointing authority within ninety days after discharge from hospitalization or medical treatment which immediately follows the termination of and results from such service, but such application shall be made within one year and ninety days after termination of such service, notwithstanding such hospitalization or medical treatment;

(d) That he OR SHE submits an honorable discharge or other form of release by proper authority indicating that his OR HER military service was satisfactory.

(2) Upon such reinstatement, the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if he OR SHE had been actually employed during the time of such leave. No officer or employee so reinstated shall be removed or discharged within one year thereafter, except for cause and after notice and hearing; but this shall not operate to extend a term of service or office limited by law.

SECTION 45. 28-3-605, Colorado Revised Statutes, is amended to read:

28-3-605. Public officer - certificate for reinstatement. Any public officer elected or appointed for a definite term who, before the expiration of such term, returns from military service under leave of

absence without pay, in lieu of making written application for reinstatement as provided in section 28-3-604, shall file in the same office where his OR HER official oath is filed, within forty-five days after termination of such military service, a verified certificate that he OR SHE has complied with the conditions for reinstatement prescribed in section 28-3-604, and he OR SHE shall thereupon be deemed to have resumed his OR HER office.

SECTION 46. 28-3-606, Colorado Revised Statutes, is amended to read:

28-3-606. Public pension rights retained. Any public officer or employee receiving leave of absence under the preceding sections and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all such rights accrued up to the time of taking such leave and shall have all rights subsequently accruing under such system as if he OR SHE had been actually employed during the time of such leave. Any increase in the amount of money benefits accruing with respect to the time of such leave is dependent upon the payment of any contributions or assessments, and the right to such increase is dependent upon the payment of such contributions or assessments within such reasonable time after the termination of such leave and upon such terms as the authorities in charge of the system may prescribe.

SECTION 47. 28-3-607, Colorado Revised Statutes, is amended to read:

28-3-607. Public employees - substitute during service. If a public officer or employee is absent with leave under the provisions of the preceding sections and if it is necessary in the public interest to provide for the performance of the duties of his OR HER position during such absence, the authority having power to fill a vacancy in the position may appoint a substitute, to be known as acting incumbent, who shall qualify as required for the regular incumbent, shall receive the same compensation as fixed by law or otherwise such compensation as may be fixed by proper authority, and shall have all the power and perform all the duties of the position until the return of the regular incumbent; except that this shall not preclude the making of any other provision for the discharge of the duties of the position which may be otherwise authorized by law.

SECTION 48. 28-3-609, Colorado Revised Statutes, is amended to

read:

28-3-609. Private employees - annual military leave. Any person who is a duly qualified member of the Colorado national guard or the reserve forces of the United States who in order to receive military training with the armed forces of the United States, not to exceed fifteen days in any one calendar year, leaves a position other than a temporary position in the employ of an employer, and who gives evidence of the satisfactory completion of such training, and who is still qualified to perform the duties of such position is entitled to be restored to his OR HER previous or a similar position in the same status, pay, and seniority, and such period of absence for military training shall be construed as an absence with leave and without pay.

SECTION 49. 28-3-610, Colorado Revised Statutes, is amended to read:

28-3-610. Private employees - benefits retained. Such absence for military training will in no way affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his OR HER employment normally to be anticipated in his OR HER particular position.

SECTION 50. 28-3-701, Colorado Revised Statutes, is amended to read:

28-3-701. Misuse of property and funds by military personnel - penalty. Any officer or enlisted man PERSON who refuses to account for and to surrender up any moneys or any uniforms or equipment or other military property for which he OR SHE is responsible or accountable, or who appropriates the same to his OR HER own use, or who knowingly makes a false payroll or signs a false certificate which is the basis for the payment of moneys under this article, or who aids or abets another in any of these acts commits a class 6 felony and shall be punished as provided in section 18-1-105, C.R.S.

SECTION 51. 28-3-705, Colorado Revised Statutes, is amended to read:

28-3-705. Uniforms and equipment - distribution and return.

The commanding officer of an organization receiving clothing or equipment for the use of his OR HER command shall distribute the same to the members of his OR HER command, taking receipts and requiring the return of each article at such time and place as he OR SHE directs.

SECTION 52. 28-3-706, Colorado Revised Statutes, is amended to read:

28-3-706. Deductions from pay - forfeitures - lost equipment.

Legal fines or forfeitures and the value of any articles of uniform, arms, or equipment, whether state or federal, issued to any officer or enlisted man PERSON which he OR SHE fails to return on demand of proper authority and for the loss of or damage to which he OR SHE has been held responsible by a report of survey or other proper proceeding shall be deducted from such officer's or enlisted man's PERSON'S pay in the manner provided for in federal or state orders or regulations. Deductions from federal pay and allowances may only be made in the manner prescribed by federal law or regulation.

SECTION 53. 28-3-801, Colorado Revised Statutes, is amended to read:

28-3-801. Disability and death benefits. A member of the military forces of the state of Colorado who dies or is disabled while in, or as a result of, active service on behalf of this state ordered by competent authority, which death or disability arises out of and in the course of his OR HER employment in the active service of the state of Colorado, is entitled to workers' compensation benefits in accordance with the provisions of the "Workers' Compensation Act of Colorado"; but no workers' compensation benefits shall be paid under this section in any case where similar benefits are payable under the provisions of any federal law or regulation.

SECTION 54. 28-3-902, Colorado Revised Statutes, is amended to read:

28-3-902. Encampments, maneuvers, and parades. The governor may order the military forces or any part thereof into camp each year for such period as he OR SHE may direct and shall also provide for their participation in encampments or field maneuvers at such places as may be designated by the federal government. He THE GOVERNOR may, in his OR

HER discretion, order such organizations as he OR SHE may deem proper to parade for purposes of drill, review, or escort duty and prescribe all regulations and requirements therefor.

SECTION 55. 28-3-903, Colorado Revised Statutes, is amended to read:

28-3-903. Inspections. When so ordered by the governor, an inspection shall be made by such officer designated by him THE GOVERNOR of all of the military forces of the state of Colorado, and such inspector shall report the number of troops present, the condition of their arms, equipment, and clothing, their proficiency, and such other information as may be required of or deemed proper by him OR HER. There shall be at least one inspection annually at such time and place as the governor designates. The forms and mode of inspection shall be prescribed by the adjutant general.

SECTION 56. 28-3-1201, Colorado Revised Statutes, is amended to read:

28-3-1201. Long service medal. A medal, designated as the "long service medal", shall be awarded each officer and enlisted man PERSON of the national guard of Colorado who has served honestly and faithfully in any organization or department of the national guard of Colorado, in state or federal service, for a period of ten years, not necessarily consecutive, and, for every period of five years thereafter, there shall be awarded a suitable bar to be worn on the ribbon of the medal.

SECTION 57. 28-3-1202, Colorado Revised Statutes, is amended to read:

28-3-1202. Meritorious conduct medal. A medal, designated as the "meritorious conduct medal", shall be awarded each officer and enlisted man PERSON of the national guard of Colorado who, when on an active duty status not in the federal service, distinguishes himself OR HERSELF by extraordinary heroism or has endangered his OR HER life in saving the lives of others.

SECTION 58. 28-3-1203, Colorado Revised Statutes, is amended to read:

28-3-1203. Meritorious service medal. A medal, designated as the "meritorious service medal", shall be awarded any person serving in any capacity in or with the national guard of Colorado who distinguishes himself OR HERSELF by exceptionally meritorious service for the state of Colorado.

SECTION 59. 28-3-1205, Colorado Revised Statutes, is amended to read:

28-3-1205. Lapel button. A lapel button denoting membership in the Colorado national guard shall be given without cost to every actively participating officer and enlisted man PERSON.

SECTION 60. 28-3.1-104 (1), Colorado Revised Statutes, is amended to read:

28-3.1-104. Jurisdiction to try certain personnel. (1) Any person discharged from the military forces who is later charged with having fraudulently obtained his OR HER discharge is subject to trial by court-martial on that charge and, after apprehension, shall be subject to this code while in the custody of the military for that trial. Upon conviction of that charge, he OR SHE is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

SECTION 61. 28-3.1-106 (2), Colorado Revised Statutes, is amended to read:

28-3.1-106. State judge advocate general and judge advocates. (2) The adjutant general may appoint as many assistant state judge advocates as he OR SHE considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the state military forces and members of the bar of the state of Colorado.

SECTION 62. 28-3.1-107 (1), (2), (3), and (4), Colorado Revised Statutes, are amended to read:

28-3.1-107. Apprehension and restraint. (1) Officers, warrant officers, and enlisted men MEMBERS of the military forces may be placed in arrest by their military superiors upon reasonable belief that an offense in violation of this code has been committed and that the person

apprehended committed such offense. An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his OR HER company or subject to his OR HER authority into arrest or confinement. A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he OR SHE is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated. No person may be ordered apprehended or into arrest or confinement except for probable cause. This section shall not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(2) If any member of the military forces fails or refuses to report to his OR HER appointed place of duty, his OR HER commanding officer is authorized to arrest or cause to be arrested such member and have him OR HER brought before the commanding officer at his OR HER unit or organization headquarters, whether such headquarters be located within or without the borders of the state. After such an arrest, the commanding officer is authorized to transport such member to his OR HER appointed place of duty, whether within or without the borders of the state. If military personnel are not available for the purpose of making the arrest, or if the commanding officer deems it advisable, he OR SHE may issue a warrant to any peace officer authorized to serve warrants of arrest under state criminal law, and such peace officer is authorized and required to serve such warrant in the same manner as other warrants of arrest and make return thereof to the commanding officer issuing the warrant.

(3) If the commanding officer issuing the warrant is unavailable to receive the person arrested, the arresting officer shall take ~~him~~ THE PERSON before a county court judge in the state. The judge may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he OR SHE deems proper, conditioned upon the person arrested appearing before said judge at a time specified in such bond for his OR HER surrender to the commanding officer issuing the warrant or to his OR HER representative. If the person arrested is unable to post bail, he OR SHE shall be committed by the judge to the county jail for a period of time not to exceed three days to

await surrender to the commanding officer issuing the warrant or to his OR
HER representative.

(4) Warrants of arrest issued pursuant to this section shall be in the
following form:

STATE OF _____)

)

ss.

COUNTY OF _____)

To the (Sheriff), (Constable), (Chief of Police) of
_____ (Or the name and rank of the officer, First Sergeant,
or N.C.O. ordered to make the arrest) of

County

(name of individual to be arrested, rank, serial number)
a member of _____, Colorado National Guard, having failed or refused

(unit designation)
to report to his OR HER appointed place of duty at _____,
you are therefore commanded forthwith to arrest the above named

(name of individual to be arrested)
and bring him OR HER before me at _____.

(unit headquarters)
The arrest is authorized to be made either during the day or at night. Dated
at _____, this _____ day of _____, 20__.

/s/_____

(Type signer's name, rank, branch,

organization, and designation as

commanding officer)

SECTION 63. 28-3.1-108, Colorado Revised Statutes, is amended to read:

28-3.1-108. Apprehension of deserters. Any officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or the District of Columbia may summarily apprehend a deserter from the military forces. If the offender is apprehended outside the state of Colorado, his OR HER return to Colorado must be in accordance with normal extradition procedure or reciprocal agreement.

SECTION 64. 28-3.1-109, Colorado Revised Statutes, is amended to read:

28-3.1-109. Restraint of persons charged with offenses. Any person subject to this code who is charged with an offense under this code may be ordered into arrest or confinement by the convening authority, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him OR HER of the specific offense of which he OR SHE is accused and to try him OR HER or to dismiss the charges and release him OR HER.

SECTION 65. 28-3.1-110 (2) and (3), Colorado Revised Statutes, are amended to read:

28-3.1-110. Confinement. (2) No provost marshal, commander of a guard, or master-at-arms, and no warden, sheriff, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under subsection (1) of this section may refuse to receive or keep any prisoner committed to his OR HER charge when the committing person furnishes a statement signed by him OR HER of the offense charged against the prisoner.

(3) Every commander of a guard, every master-at-arms, and every warden, sheriff, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under subsection (1) of this section

to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he OR SHE is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him OR HER, and the name of the person who ordered or authorized the commitment.

SECTION 66. 28-3.1-112, Colorado Revised Statutes, is amended to read:

28-3.1-112. Punishment prohibited before trial. Subject to section 28-3.1-403, no person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against ~~him~~ SUCH PERSON, nor shall the arrest or confinement imposed upon ~~him~~ SUCH PERSON be any more rigorous than the circumstances require to insure his OR HER presence. However, such person may be subjected to minor punishment during that period for infractions of discipline.

SECTION 67. 28-3.1-113 (2), Colorado Revised Statutes, is amended to read:

28-3.1-113. Delivery of offenders to civil authorities. (2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial and the delivery interrupts the execution of the sentence of the court-martial, the offender after having answered to the civil authorities for his OR HER offense shall, upon the request of competent military authority, be returned to military custody for the completion of his OR HER sentence.

SECTION 68. 28-3.1-114 (1), the introductory portion to 28-3.1-114 (2) (a), the introductory portion to 28-3.1-114 (2) (b), and 28-3.1-114 (2) (b) (IV), (4), and (5), Colorado Revised Statutes, are amended to read:

28-3.1-114. Commanding officer's nonjudicial punishment. (1) Punishment may be imposed for any offense cognizable by a court-martial upon any member of the state military forces under this section. Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of

commanding officers and warrant officers exercising command authorized to exercise those powers. If authorized by regulations of the governor, the governor or an officer of general rank in command may delegate his OR HER powers under this section to a principal assistant. If subject to disciplinary punishment, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under section 28-3.1-102 (14), if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his OR HER choice. The accused may also employ civilian counsel of his OR HER own choosing at his OR HER 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.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses, as defined by the governor, without the intervention of a court-martial:

(a) Upon an officer of his OR HER command:

(b) Upon other military personnel of his OR HER command:

(IV) Reduction to next inferior grade if the grade from which he OR SHE was demoted was established by the command or an equivalent or lower command;

(4) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he OR SHE is in charge, the punishments authorized to be imposed by commanding officers.

(5) Except where punishment has been imposed by the governor, a person punished under this section who considers his SUCH punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his OR HER successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected.

SECTION 69. 28-3.1-205 (2) and (3), Colorado Revised Statutes,

are amended to read:

28-3.1-205. Jurisdiction of summary courts-martial. (2) No person shall be tried by a summary court-martial if, prior to trial, he OR SHE objects thereto. If an objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as appropriate.

(3) A summary court-martial may sentence an offender to confinement for not more than thirty days, to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances of not more than two hundred fifty dollars for a single offense, to reduction of an enlisted ~~man~~ PERSON to any inferior grade, and to any combination of these punishments.

SECTION 70. 28-3.1-208 (2), Colorado Revised Statutes, is amended to read:

28-3.1-208. Who may convene summary courts-martial.

(2) When only one commissioned officer is present with a command or detachment, he OR SHE shall be the summary court-martial of that command or detachment and shall hear and determine all summary courts-martial cases brought before him OR HER. Summary courts-martial may, however, be convened in any case by superior authority.

SECTION 71. 28-3.1-209 (3) (a) and (4), Colorado Revised Statutes, are amended to read:

28-3.1-209. Who may serve on courts-martial. (3) (a) Any enlisted member of the military forces 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 any enlisted member, but he OR SHE shall serve as a member of a court only if, before convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused shall 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 enlisted members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority

shall make a detailed written statement, to be appended to the record, stating why enlisted members could not be obtained.

(4) (a) No person subject to this code may be tried by a court-martial of which any member is junior to him OR HER in rank or grade, unless it cannot be avoided and then only by order of the governor.

(b) When convening a court-martial, the convening authority shall detail as members thereof those persons as, in his OR HER opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he OR SHE is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of this state and of appropriate rank and grade, the convening authority shall appoint him OR HER as president of a general or special court-martial. Although this requirement shall be binding on the convening authority, failure to meet it in any case shall not divest a military court of jurisdiction.

SECTION 72. 28-3.1-210, Colorado Revised Statutes, is amended to read:

28-3.1-210. Military judge of a general or special court-martial.

(1) The authority convening a general or special court-martial shall request the state judge advocate general to detail as military judge thereof a commissioned officer who is a member of the bar of this state. No person is eligible to act as military judge in a case if he OR SHE is the accuser or witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(2) The military judge may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he OR SHE vote with the members of the court.

SECTION 73. 28-3.1-211 (1), Colorado Revised Statutes, is amended to read:

28-3.1-211. Detail of trial and defense counsel. (1) For each

general or special court-martial, the authority convening the court shall request the state judge advocate general to detail trial counsel and defense counsel and assistants as he OR SHE considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

SECTION 74. 28-3.1-214 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

28-3.1-214. Charges and specifications. (1) Charges and specifications shall be signed by an accuser subject to this code, under oath, before a commissioned officer of the state military force authorized to administer oaths and shall state:

(b) That they are true in fact to the best of his OR HER knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the accused shall be informed of the charges against him OR HER as soon as practicable.

SECTION 75. 28-3.1-215 (1), (2), and (4), Colorado Revised Statutes, are amended to read:

28-3.1-215. Compulsory self-incrimination prohibited. (1) No person subject to this code shall compel any person to incriminate himself OR HERSELF or to answer any question, the answer to which may tend to incriminate him OR HER.

(2) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing ~~him~~ THE PERSON of the nature of the accusation and advising ~~him~~ THE PERSON that he OR SHE does not have to make any statement regarding the offense of which he OR SHE is accused or suspected, that any statement made by ~~him~~ THE PERSON may be used as evidence against him OR HER in

a trial by court-martial, that he THE PERSON has a right to consult with a lawyer, that he THE PERSON has a right to have a lawyer, and that upon his THE PERSON'S request a lawyer will be provided him OR HER without cost or, if he THE PERSON prefers, he OR SHE may retain counsel of his OR HER choice at his OR HER own expense.

(4) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him SUCH PERSON in a trial by court-martial.

SECTION 76. 28-3.1-216 (2) and (3), Colorado Revised Statutes, are amended to read:

28-3.1-216. Investigation. (2) The accused shall be advised of the charges against him OR HER and of his OR HER right to be represented by civilian counsel if provided by him OR HER, or by military counsel of his OR HER own selection if such counsel is reasonably available, or by counsel detailed by the state judge advocate. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against him OR HER if they are available and to present anything he OR SHE may desire in his OR HER 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 thereof shall be given to the accused.

(3) 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 (2) of this section, no further investigation of that charge is necessary under this section, unless it is demanded by the accused after he OR SHE 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 OR HER own behalf.

SECTION 77. 28-3.1-218 (1), Colorado Revised Statutes, is amended to read:

28-3.1-218. Advice of state judge advocate and reference for trial. (1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate general for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he OR SHE has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

SECTION 78. 28-3.1-219, Colorado Revised Statutes, is amended to read:

28-3.1-219. Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. No person shall, against his OR HER objection, be brought to trial or be required to participate by himself OR HERSELF or by counsel in a session called by the military judge under section 28-3.1-304 before a general court-martial within five days after the service of the charges upon him OR HER, or before a special court-martial within three days after the service of the charges upon him OR HER.

SECTION 79. 28-3.1-302 (1) and (2) (a), Colorado Revised Statutes, are amended to read:

28-3.1-302. Unlawfully influencing action of court. (1) No authority convening a general, special, or summary court-martial, nor any other commanding officer or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of their functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to his OR HER judicial acts. The provisions of this subsection (1) shall not apply to general instructional or informational courses in military justice, if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or to statements and instructions given in open court by the military judge or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces should be retained on duty, no person subject to this code may, in preparing any such report:

(a) Consider or evaluate the performance of duty of any such member as a member, military judge, or trial counsel of a court-martial; except that this paragraph (a) is not applicable to evaluations made by the state judge advocate of the performance of personnel under his OR HER supervision;

SECTION 80. 28-3.1-303 (2), (3), (4), and (5), Colorado Revised Statutes, are amended to read:

28-3.1-303. Duties of trial counsel and defense counsel. (2) The accused has the right to be represented in his OR HER defense before a general or special court-martial by civilian counsel if provided by him OR HER, or by military counsel of his OR HER own selection if reasonably available, or by the defense counsel detailed under section 28-3.1-211. If the accused has counsel of his OR HER own selection, the defense counsel and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as his OR HER associate counsel; otherwise they shall be excused by the military judge.

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

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he OR SHE is qualified to be a trial counsel as required by section 28-3.1-211, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he OR SHE is qualified to be the defense counsel as required by section 28-3.1-211,

perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

SECTION 81. 28-3.1-308 (3), Colorado Revised Statutes, is amended to read:

28-3.1-308. Statute of limitations. (3) Periods in which the accused was absent from territory in which the state has authority to apprehend him OR HER, or in the custody of civil authorities, or in the hands of the enemy of any hostile force shall be excluded in computing the period of limitation prescribed in this section.

SECTION 82. 28-3.1-310 (1), Colorado Revised Statutes, is amended to read:

28-3.1-310. Pleas of the accused. (1) If an accused, after arraignment, makes an irregular pleading or, after a plea of guilty, sets up matter inconsistent with the plea, or if it appears that an accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if an accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he OR SHE had pleaded not guilty.

SECTION 83. 28-3.1-316 (2), (3) (a), and (3) (b), Colorado Revised Statutes, are amended to read:

28-3.1-316. Voting and rulings. (2) The military judge of a general or special court-martial shall rule upon interlocutory questions, other than a challenge, arising during the proceedings. Any ruling made by the military judge upon any interlocutory question, other than a motion for a finding of not guilty or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial; except that he OR SHE may not change a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 28-3.1-317, beginning with the junior member in rank.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the

elements of the offense and charge the court:

- (a) That the accused must be presumed to be innocent until his OR HER guilt is established by legal and competent evidence beyond reasonable doubt;
- (b) That 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 OR SHE must be acquitted;

SECTION 84. 28-3.1-319, Colorado Revised Statutes, is amended to read:

28-3.1-319. Record of trial. General and special courts-martial shall keep a verbatim record of the trial of each case. Upon a request of the accused, a reviewing authority, or the state judge advocate general, the record shall be transcribed and authenticated by the president or the military judge. If the record cannot be authenticated by either the president or the military judge by reason of his OR HER death, disability, or absence, it shall be authenticated by two members of the court. In all other courts-martial, records of trial shall contain such matter and be authenticated in such manner as the governor prescribes by regulation.

SECTION 85. 28-3.1-403 (3), Colorado Revised Statutes, is amended to read:

28-3.1-403. Effective date of sentences. (3) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his OR HER jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his OR HER sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his OR HER jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

SECTION 86. 28-3.1-405, Colorado Revised Statutes, is amended to read:

28-3.1-405. Commitment under sentence of confinement. When a sentence of confinement is imposed to be served other than in a guardhouse, the convening authority shall issue a writ in the following or similar form:

STATE OF _____)

)

ss.

_____ COUNTY OF _____)

To the Sheriff of _____ County, _____, State of Colorado.

WHEREAS, _____ of _____ in the _____ County of _____, a member of the Colorado National Guard, was on the ___ day of ___, 20___, tried by court-martial and found guilty of _____ in violation of the Colorado Military Code and was sentenced to serve _____ days imprisonment; and

WHEREAS, as such sentence was approved and ordered executed by the convening authority, on the ___ day of ___, 20___;

THEREFORE, you were commanded to take the body of the said _____ and commit him OR HER to the keeper of the jail, who is hereby commanded to receive the body of the said _____ and keep him OR HER safely for the term of ___ days, after which he OR SHE shall be released.

Fail not, but do as herein commanded and make a return within sixty (60) days from this date.

Dated at _____, in the _____ County of _____ this ____ day of _____, 20___.

SECTION 87. 28-3.1-406 (2), Colorado Revised Statutes, is amended to read:

28-3.1-406. Collection of fines. (2) The commitment to the county jail for nonpayment of fines shall be in the following or similar form:
STATE OF _____)

)

ss.

_____ COUNTY OF _____)

To the Sheriff of _____ County _____, State of Colorado.

WHEREAS, _____ of _____ in the _____ County of _____, a member of the Colorado National Guard, was on the _____ day of _____, 20____, tried by court-martial and found guilty of _____ in violation of the Colorado Military Code and was sentenced to pay a fine of _____ Dollars; and

WHEREAS, such fine has not been paid;

NOW, THEREFORE, by authority of the State of Colorado, you are hereby commanded to take the body of the said _____ and commit it to the keeper of the jail in the _____ County of _____, who is hereby commanded to receive the body of the said _____ and keep him OR HER safely until he OR SHE pays the sum above mentioned, or shall have served one (1) day for each dollar of said fine, after which time he OR SHE shall be released.

Fail not, but make service and return within sixty (60) days from this date.

Dated at _____, in the _____ County of _____ this _____ day of _____, 20____.

SECTION 88. 28-3.1-407, Colorado Revised Statutes, is amended to read:

28-3.1-407. Initial action on the record. After a trial by court-martial, the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or the governor. The reviewer may approve the sentence or such part, amount, or commuted form of the sentence as he OR SHE sees fit and may suspend or defer the execution of the sentence.

SECTION 89. 28-3.1-409, Colorado Revised Statutes, is amended to read:

28-3.1-409. Rehearings. (1) If the convening authority disapproves the findings and sentence of a court-martial, he OR SHE may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case, he OR SHE shall state the reasons for disapproval. If he OR SHE disapproves the findings and sentence and does not order a rehearing, he OR SHE shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial whose composition shall not include any member or military judge of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which he OR SHE was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed unless the sentence is based upon a finding of guilty of an offense considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

SECTION 90. 28-3.1-410, Colorado Revised Statutes, is amended to read:

28-3.1-410. Approval by the convening authority. In acting on the findings and sentence of a court-martial, the convening authority may approve only those findings and the sentence or part or amount of the

sentence which he OR SHE finds correct in law and fact. Unless he OR SHE indicates otherwise, approval of the sentence is approval of the findings and sentence.

SECTION 91. 28-3.1-411 (1), (2), and (3), Colorado Revised Statutes, are amended to read:

28-3.1-411. Review of records - disposition. (1) If the convening authority is the governor, he OR SHE shall refer the record of courts-martial to the state judge advocate general who shall submit his OR HER written opinion to the governor. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. After consideration of the opinion, the governor's action on review of any record is final.

(2) (a) Except as provided in subsection (1) of this section, the convening authority shall refer the record of a general court-martial to the staff judge advocate designated by the state judge advocate general who shall submit his OR HER written opinion to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. When the convening authority has taken final action, he OR SHE shall forward the entire record, including his OR HER action thereon and the opinion of the staff judge advocate, to the state judge advocate general for review.

(b) In a case reviewable by the state judge advocate general under this section, the staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He OR SHE may affirm only the findings of guilty and the sentence or part or amount of the sentence which he OR SHE finds correct in law and fact and determined on the basis of the entire record. In considering the record, he OR SHE 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 staff judge advocate sets aside the findings and sentence, he OR SHE may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he OR SHE sets aside the findings and sentence and does not order a rehearing, he OR SHE shall order that the charges be dismissed.

(c) The state judge advocate general shall instruct the convening authority to act in accordance with his OR HER decision on the review. If he OR SHE has ordered a rehearing, but the convening authority finds a rehearing impracticable, he OR SHE may dismiss the charges.

(3) Except as provided in subsection (1) of this section, the convening authority of any summary or special court-martial, after taking final action on review, shall forward the entire record, including his OR HER action thereon, to the staff judge advocate designated by the state judge advocate general. With respect to such record, the staff judge advocate shall have the same duties and powers as provided for the state judge advocate general in paragraphs (b) and (c) of subsection (2) of this section.

SECTION 92. 28-3.1-412 (3), Colorado Revised Statutes, is amended to read:

28-3.1-412. Review counsel. (3) The accused may be represented by civilian counsel, provided at his OR HER expense, before the reviewing authority, before the staff judge advocate, and before the state judge advocate general.

SECTION 93. 28-3.1-413, Colorado Revised Statutes, is amended to read:

28-3.1-413. Review by governor. Notwithstanding review procedures provided in this code, in any case where no right to review by the governor exists, the accused may, within thirty days after final action is taken by any reviewing authority, petition the governor to review such final action. The governor may take action as he OR SHE deems appropriate. Failure of the governor to act within thirty days shall constitute a denial.

SECTION 94. 28-3.1-415 (1), Colorado Revised Statutes, is amended to read:

28-3.1-415. Vacation of suspension of sentence. (1) Before the vacation of the suspension of any court-martial sentence, the officer having court-martial jurisdiction over a probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel, if he OR SHE so desires.

SECTION 95. 28-3.1-418 (2) and (3), Colorado Revised Statutes, are amended to read:

28-3.1-418. Restoration. (2) If a previously executed sentence of dishonorable discharge or other punitive 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 his OR HER enlistment.

(3) 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 a commissioned officer dismissed by that sentence may be reappointed only by the governor to the commissioned grade and rank as that former officer would have attained had he OR SHE not been dismissed. The reappointment of such a 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 state purposes.

SECTION 96. 28-3.1-420 (2), Colorado Revised Statutes, is amended to read:

28-3.1-420. Appeal following review and approval. (2) When the accused petitions the governor pursuant to section 28-3.1-413 to review the final action of the reviewing authority, the time for filing notice of appeal is extended until thirty days after the governor announces his OR HER action or the petition is denied due to the governor's failure to act. No action or failure to act by the governor shall form the basis for appeal, nor shall the supreme court order review by the governor.

SECTION 97. 28-3.1-501, Colorado Revised Statutes, is amended to read:

28-3.1-501. Principal defined. A "principal", as used in this code, means any person punishable under this code who commits an offense punishable by this code or intentionally aids, abets, counsels, commands, or procures its commission or intentionally causes an act to be done which if directly performed by him OR HER would be punishable by this code.

SECTION 98. 28-3.1-502, Colorado Revised Statutes, is amended

to read:

28-3.1-502. Abetting offenders. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his OR HER apprehension, trial, or punishment shall be punished as a court-martial directs.

SECTION 99. 28-3.1-507, Colorado Revised Statutes, is amended to read:

28-3.1-507. Fraudulent enlistment, appointment, or separation.

(1) Any person shall be punished as a court-martial directs if he OR SHE:

(a) Procures his OR HER own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his OR HER qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(b) Procures his OR HER own separation from the state military forces by knowingly false representation or deliberate concealment as to his OR HER eligibility for that separation.

SECTION 100. 28-3.1-508, Colorado Revised Statutes, is amended to read:

28-3.1-508. Unlawful enlistment, appointment, or separation.

Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him OR HER to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial directs.

SECTION 101. 28-3.1-509 (1) and (2), Colorado Revised Statutes, are amended to read:

28-3.1-509. Desertion. (1) Any member of the state military forces is guilty of desertion if he OR SHE:

(a) Without authority, goes or remains absent from his OR HER unit,

organization, or place of duty with intent to remain away therefrom permanently; or

(b) Quits his OR HER unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

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

(2) Any commissioned officer of the state military forces who, after tender of his OR HER resignation and before notice of its acceptance, quits his OR HER post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

SECTION 102. The introductory portion to 28-3.1-510 (1) and 28-3.1-510 (1) (a) and (1) (c), Colorado Revised Statutes, are amended to read:

28-3.1-510. Absence without leave. (1) Any person subject to this code shall be punished as a court-martial directs when he OR SHE, without authority:

(a) Fails to go to his OR HER appointed place of duty at the time prescribed;

(c) Absents himself OR HERSELF or remains absent from his OR HER unit, organization, or place of duty at which he OR SHE is required to be at the time prescribed.

SECTION 103. 28-3.1-511, Colorado Revised Statutes, is amended to read:

28-3.1-511. Failure to embark. Any person subject to this code who, through neglect or design, misses the movement of a ship, aircraft, or unit with which he OR SHE is required in the course of duty to move shall be punished as a court-martial directs.

SECTION 104. 28-3.1-513, Colorado Revised Statutes, is amended to read:

28-3.1-513. Disrespect towards superior commissioned officer.

Any person subject to this code who behaves with disrespect towards his OR HER superior commissioned officers shall be punished as a court-martial directs.

SECTION 105. 28-3.1-514, Colorado Revised Statutes, is amended to read:

28-3.1-514. Assaulting or willfully disobeying superior commissioned officer. (1) Any person subject to this code shall be punished as a court-martial directs if he OR SHE:

(a) Strikes his OR HER superior commissioned officer or draws or lifts up any weapon or offers any violence against such officer while he OR SHE is in the execution of his OR HER office; or

(b) Willfully disobeys a lawful command of his OR HER superior commissioned officer.

SECTION 106. The introductory portion to 28-3.1-515 (1) and 28-3.1-515 (1) (a) and (1) (c), Colorado Revised Statutes, are amended to read:

28-3.1-515. Insubordinate conduct toward warrant officer or noncommissioned officer. (1) Any warrant officer or enlisted member shall be punished as a court-martial directs if he OR SHE:

(a) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his OR HER office; or

(c) 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 OR HER office.

SECTION 107. 28-3.1-517, Colorado Revised Statutes, is amended to read:

28-3.1-517. Maltreatment of inferiors. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his OR HER orders shall be punished as a court-martial directs.

SECTION 108. 28-3.1-518 (1) and (3), Colorado Revised Statutes, are amended to read:

28-3.1-518. Mutiny - sedition. (1) Any person subject to this code who, with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his OR HER duty or creates any violence or disturbance is guilty of mutiny.

(3) Any such person who fails to do his OR HER utmost to prevent and suppress a mutiny or sedition being committed in his OR HER presence or fails to take all reasonable means to inform his OR HER superior commissioned officer or commanding officer of a mutiny or sedition which he OR SHE knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

SECTION 109. 28-3.1-520, Colorado Revised Statutes, is amended to read:

28-3.1-520. Unlawful release of prisoners. Any person subject to this code who, without proper authority, releases any prisoner committed to his OR HER charge or who, through neglect or design, suffers any such prisoner to escape shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law.

SECTION 110. The introductory portion to 28-3.1-523 (1) and 28-3.1-523 (1) (b), (1) (d), (1) (f), and (1) (h), Colorado Revised Statutes, are amended to read:

28-3.1-523. Misbehavior before the enemy or any hostile force.

(1) Any person subject to this code shall be punished as a court-martial directs when he OR SHE, before or in the presence of the enemy or any hostile force:

(b) Abandons, surrenders, or delivers up any command, unit, place, or military property which it is his OR HER duty to defend;

- (d) Casts away his OR HER arms or ammunition;
- (f) Quits his OR HER place of duty to plunder or pillage;
- (h) Willfully fails to do his OR HER utmost to encounter, engage, capture, or destroy any enemy troops, hostile forces, combatants, vessels, aircraft, or any other thing, which it is his OR HER duty so to encounter, engage, capture, or destroy; or

SECTION 111. 28-3.1-525, Colorado Revised Statutes, is amended to read:

28-3.1-525. Improper use of countersign. Any person subject to this code who discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his OR HER knowledge, he OR SHE was authorized and required to give, shall be punished as a court-martial directs.

SECTION 112. The introductory portion to 28-3.1-527 (2) and 28-3.1-527 (2) (b), Colorado Revised Statutes, are amended to read:

28-3.1-527. Captured or abandoned property. (2) Any person subject to this code shall be punished as a court-martial directs if he OR SHE:

- (b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property whereby he OR SHE receives or expects any profit, benefit, or advantage to himself OR HERSELF or another directly or indirectly connected with himself OR HERSELF; or

SECTION 113. 28-3.1-529, Colorado Revised Statutes, is amended to read:

28-3.1-529. Misconduct of a prisoner. (1) Any person subject to this code shall be punished as a court-martial directs when he OR SHE, while in the hands of the enemy or any hostile force:

- (a) For the purpose of securing favorable treatment by his OR HER captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others held by the enemy or any hostile

force as civilian or military prisoners; or

(b) While in a position of authority over prisoners maltreats them without justifiable cause.

SECTION 114. 28-3.1-534, Colorado Revised Statutes, is amended to read:

28-3.1-534. Intoxicated on duty - leaving or sleeping on post. Any person subject to this code who is found drunk on duty or sleeping upon his OR HER post or who leaves his OR HER post before he OR SHE is regularly relieved shall be punished as a court-martial directs.

SECTION 115. 28-3.1-538 (1), Colorado Revised Statutes, is amended to read:

28-3.1-538. Larceny and wrongful appropriation. (1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind: With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his OR HER own use or the use of any person other than the owner, is guilty of larceny; or, with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his OR HER own use or the use of any person other than the owner, is guilty of wrongful appropriation.

SECTION 116. 28-3.1-539, Colorado Revised Statutes, is amended to read:

28-3.1-539. Robbery. Any person subject to this code who with intent to steal takes anything of value from the person or in the presence of another against his OR HER will, by means of force or violence or fear of immediate or future injury to his OR HER person or property or to the person or property of a relative or member of his OR HER family or of anyone in his OR HER company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial directs.

SECTION 117. 28-3.1-540, Colorado Revised Statutes, is amended to read:

28-3.1-540. Forgery. Any person subject to this code who, with intent to defraud, falsely makes or alters any signature to any writing or any part thereof which would, if genuine, apparently impose a legal liability on another or change his OR HER legal right or liability to his OR HER prejudice or utters, offers, issues, or transfers such a writing, known to him OR HER to be so made or altered, is guilty of forgery and shall be punished as a court-martial may direct.

SECTION 118. 28-3.1-541, Colorado Revised Statutes, is amended to read:

28-3.1-541. Maiming. Any person subject to this code who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which seriously disfigures his OR HER person by any mutilation thereof, destroys or disables any member or organ of his OR HER body, or seriously diminishes his OR HER physical vigor by the injury of any member or organ is guilty of maiming and shall be punished as a court-martial directs.

SECTION 119. The introductory portion to 28-3.1-547 (1) and 28-3.1-547 (1) (c), Colorado Revised Statutes, are amended to read:

28-3.1-547. Frauds against the government. (1) Any person subject to this code shall be punished as a court-martial directs if he OR SHE:

(c) Having charge, possession, custody, or control of any 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 any person having authority to receive it any amount thereof less than that for which he OR SHE receives a certificate or receipt; or

SECTION 120. 28-3.1-602 (3), Colorado Revised Statutes, is amended to read:

28-3.1-602. Authority to administer oaths. (3) The signature without seal of any person designated in this section, together with the title of his OR HER office, is prima facie evidence of his OR HER authority.

SECTION 121. 28-3.1-603, Colorado Revised Statutes, is amended to read:

28-3.1-603. Sections to be explained. Sections of this code shall be carefully explained to every person at the time of his OR HER enlistment, appointment, transfer, or induction into or at the time of his OR HER order to duty in or with any of the state military forces or within ninety days thereafter. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the state military forces, upon his OR HER request, for his OR HER personal examination. The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

SECTION 122. 28-3.1-605 (1) and (3), Colorado Revised Statutes, are amended to read:

28-3.1-605. Redress of injuries to property. (1) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his OR HER property has been wrongfully taken by members of the state military forces, ~~he~~ SAID COMMANDING OFFICER may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of one to three commissioned officers and, for the purpose of that investigation, the board has power to summon witnesses and examine them under oath, to receive depositions or other documentary evidence, and to 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~~ THE COMMANDING OFFICER, shall be charged against the pay of the offenders. The order of the commanding officer directing such charges is conclusive on any disbursing officer for the payment by him OR HER to the injured parties of the damages so assessed and approved.

(3) Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his OR HER behalf, and to cross-examine those appearing against him OR HER.

SECTION 123. 28-3.1-607, Colorado Revised Statutes, is amended to read:

28-3.1-607. Delegation of authority by the governor. The

governor may delegate any authority vested in him OR HER under this code.

SECTION 124. 28-4-110, Colorado Revised Statutes, is amended to read:

28-4-110. Federal service. Nothing in this article shall be construed as authorizing such forces, or any part thereof, to be called, ordered, or in any manner drafted as such into the military service of the United States, but no person shall by reason of his OR HER enlistment or commission in any such forces be exempted from military service under any law of the United States.

SECTION 125. 28-5-202 (1), Colorado Revised Statutes, is amended to read:

28-5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Administrator" means the administrator of veterans' affairs of the United States or his OR HER successor.

SECTION 126. 28-5-205, Colorado Revised Statutes, is amended to read:

28-5-205. Limitation on number of wards. No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person alleging that a guardian is acting in a fiduciary capacity for more than five wards as provided in this section and requesting his OR HER discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him OR HER from guardianships in excess of five and forthwith appoint a successor.

SECTION 127. 28-5-207, Colorado Revised Statutes, is amended to read:

28-5-207. Evidence of necessity for guardian of infant. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his OR HER authorized representative setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be *prima facie* evidence of the necessity for such appointment.

SECTION 128. 28-5-208, Colorado Revised Statutes, is amended to read:

28-5-208. Evidence of necessity for guardian for incompetent. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his OR HER duly authorized representative that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the veterans administration shall be *prima facie* evidence of the necessity for such appointment.

SECTION 129. 28-5-210, Colorado Revised Statutes, is amended to read:

28-5-210. Bond of guardian. (1) Upon the appointment of a guardian, he OR SHE shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties, and they shall file with the court a certificate under oath which describes the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his OR HER debts and liabilities and the aggregate of other bonds on which he OR SHE is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium

thereon to be paid from the ward's estate.

SECTION 130. 28-5-211 (1), (2), and (4), Colorado Revised Statutes, are amended to read:

28-5-211. Accounts of securities - notices and hearings.

(1) Every guardian who has received or who shall receive on account of his OR HER ward any moneys or other thing of value from the veterans administration shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or other things of value so received by him OR HER, all earnings, interest, or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his OR HER hands at the date of the account and how invested.

(2) The guardian, at the time of filing any account, shall exhibit all securities or investments held by him OR HER to an officer of the bank or other depository wherein said securities or investments are held for safekeeping, or to an authorized representative of the corporation which is surety on his OR HER bond, or to the judge or clerk of a court of record in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he OR SHE has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate, and one of each shall be filed by the guardian with his OR HER account.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he OR SHE shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

SECTION 131. 28-5-212, Colorado Revised Statutes, is amended to read:

28-5-212. Penalty for failure to account. If any guardian fails to file with the court any account as required by this part 2, or by an order of the court, when any account is due or within thirty days after citation issues as provided by law, or fails to furnish the veterans administration a true copy of any account, petition, or pleading as required by this part 2, such failure may in the discretion of the court be a ground for his OR HER removal.

SECTION 132. 28-5-214, Colorado Revised Statutes, is amended to read:

28-5-214. Investments. Every guardian shall invest the surplus funds of his OR HER ward's estate in such securities or property as authorized under the laws of this state, but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

SECTION 133. 28-5-216, Colorado Revised Statutes, is amended to read:

28-5-216. Purchase of home for ward. (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his OR HER interest, or as a home for his OR HER dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment, the court shall require

written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his OR HER ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such is necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

SECTION 134. 28-5-217, Colorado Revised Statutes, is amended to read:

28-5-217. Copies of public records to be furnished. When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record, without charge, shall provide the applicant for such benefits or any person acting on his OR HER behalf or the authorized representative of the veterans administration with a certified copy of such record.

SECTION 135. 28-5-218, Colorado Revised Statutes, is amended to read:

28-5-218. Discharge of guardian - release of sureties. A certificate by the veterans administration showing that a minor has attained majority or that an adult ward has been rated competent by the veterans administration upon examination made in accordance with the law shall be prima facie evidence that the minor has attained majority or that the adult ward's property no longer requires court supervision. Upon hearing after notice as provided by this part 2 and the entry of a record determination by the court that the guardianship is to be dispensed with, the guardian shall be directed by the court to file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account and upon delivery to the ward of the assets due him OR HER from the guardian, the guardian shall be discharged and his OR HER sureties released.

SECTION 136. 28-5-220 (1) and (2), Colorado Revised Statutes, are amended to read:

28-5-220. Commitment to veterans administration. (1) When, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his OR HER proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration, the court, upon receipt of a certificate from the veterans administration showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration. Upon commitment, such person when admitted to any facility operated by such agency within or without this state shall be subject to the rules and regulations of the veterans administration. The chief officer of any facility of the veterans administration to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole, or discharge as restored to reason.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia committing a person to the veterans administration for care or treatment has the same force and effect as to the committed person while in this state as in the jurisdiction in which the court entering the judgment or making the order is situated; and the courts of the committing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person and of determining the necessity for continuance of his OR HER restraint. Consent is given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the veterans administration to retain custody or transfer, parole, or discharge the committed person.

SECTION 137. 28-5-301 (1) (n) (II), Colorado Revised Statutes, is amended to read:

28-5-301. Legal investments. (1) It is lawful for any guardian or conservator of minor or incompetent beneficiaries of the veterans administration to invest the funds of the estate or trust or to permit such funds to remain invested in any of the following:

(n) Notes or bonds secured by mortgage or deed of trust insured pursuant to Title II of the "National Housing Act" if the purchase is made by an approved mortgagee under said "National Housing Act"; except that:

(II) Any such fiduciary may retain any real property owned by his OR HER testate or intestate at date of death or by his OR HER ward at date of appointment of a guardian or conservator and that any such fiduciary may retain for a reasonable time any real property acquired by him OR HER by foreclosure of or in satisfaction of a mortgage or trust deed, but if such fiduciary is subject to the probate jurisdiction of the county court, such holding shall not exceed two years unless permitted by order of that court;

SECTION 138. 28-5-401, Colorado Revised Statutes, is amended to read:

28-5-401. Loans to minor veterans. (1) The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the "Servicemen's Readjustment Act of 1944", as amended, and of the minor spouse of any eligible veteran, irrespective of his OR HER age, in connection with any transaction entered into pursuant to said act, as amended, is removed for all purposes in connection with such transaction, including, but not limited to, incurring of indebtedness or obligations, and acquiring, encumbering, selling, releasing, or conveying real or personal property or any interest therein, and litigating or settling controversies arising therefrom if all or a part of any obligations incident to such transaction is guaranteed or insured by the administrator of veterans affairs pursuant to such act. This section shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability.

(2) A certificate purporting to have been signed by the administrator of veterans affairs or his OR HER duly authorized representative stating that all or a part of any obligations incident to such transaction is guaranteed or insured by the administrator, when recorded in the proper county, shall be prima facie evidence of such action by the administrator and shall prima

facie be deemed to have been signed and issued by the administrator or his OR HER representative pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his OR HER authority.

(3) Notwithstanding any contrary provisions of law, such veteran or the minor spouse of such veteran shall not, because of his OR HER age, avoid such contract, conveyance, obligation, or other transaction entered into pursuant to this section, nor shall such veteran, or the minor spouse of such veteran hereafter urge the fact or interpose the defense that he OR SHE is or was a minor in any action arising out of any loan, conveyance, encumbrance, or other transaction made pursuant to this section.

SECTION 139. Effective date - applicability. This act shall take effect upon passage; except that sections 12 and 13 of this act shall take effect July 1, 2002, and shall apply to offenses committed on or after said date.

SECTION 140. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED_____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO