

48-2603. Investigation; rights of accused. (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him or her and of the right to be represented at that investigation by counsel. Upon the accused's own request he or she shall be represented by civilian counsel if provided by the accused, or military counsel of the accused's own selection if such counsel is reasonably available, or by counsel detailed by the judge advocate general. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against the accused if they are available and to present anything the accused 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.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), 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.

(d) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

History: L. 1972, ch. 203, § 48-2603; July 1.