

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1412
Committee Substitute Favorable 5/6/09

Short Title: Courts-Martial Amendments.

(Public)

Sponsors:

Referred to:

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES RELATING TO
3 NATIONAL GUARD COURTS-MARTIAL.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 127A-47 reads as rewritten:

6 "**§ 127A-47. Courts-martial for national guard.**

7 Courts-martial for organizations of the national guard not in the service of the United States
8 shall be of three kinds, namely, general courts-martial, special courts-martial, and summary
9 courts-martial. They shall be constituted, have cognizance of the same subjects, and possess
10 like powers, ~~except as to punishments, as similar courts provided for by the law and regulations~~
11 ~~governing the armed forces of the United States, and the Uniform Code of Military Justice and~~
12 ~~Manual for Courts-Martial, United States, as shall be currently in use, except that no court shall~~
13 ~~have the power to impose confinement as part of a sentence. The proceedings of courts-martial~~
14 ~~of the national guard shall follow the forms and modes of procedure prescribed for such similar~~
15 ~~courts."~~

16 **SECTION 2.** G.S. 127A-48 reads as rewritten:

17 "**§ 127A-48. General courts-martial.**

18 General courts-martial of the national guard not in the service of the United States may be
19 convened by orders of the Governor of the State, and such courts shall have the power to
20 impose ~~finer not exceeding two hundred dollars (\$200.00); sentence to forfeiture of pay and~~
21 ~~allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to~~
22 ~~reduction of enlisted personnel to the ranks; or any two or more of such punishments may be~~
23 ~~combined in the sentences imposed by such courts.punishments in like manner and to the~~
24 ~~extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial,~~
25 ~~United States, as shall be in use by the armed forces of the United States at the time of the~~
26 ~~offense, except that no court shall have the authority to impose confinement as part of a~~
27 ~~sentence."~~

28 **SECTION 3.** G.S. 127A-49 reads as rewritten:

29 "**§ 127A-49. Special courts-martial; appointments, power and authority.**

30 In the national guard, not in the service of the United States, special courts-martial may be
31 appointed by any of the following:

32 (1) Any person who may convene a general court-martial.

33 (2) The Adjutant General of North Carolina.

34 (4)(3) The commander of a brigade, regiment, comparable or higher command of
35 the North Carolina army national guard;guard, provided that such
36 commander is a general officer.



1 ~~(2)~~(4) The commander of a wing, group, separate squadron, comparable or higher
2 command of the North Carolina air national ~~guard~~;guard, provided that such
3 commander is a general officer.

4 ~~(3)~~(5) The commander or officer in charge of any North Carolina national guard
5 command when empowered by the Governor or the Adjutant General of
6 North ~~Carolina~~.Carolina, provided that such commander or officer is a
7 general officer.

8 Except as to commissioned officers, such courts-martial shall have the power and authority
9 to try any person subject to military law for any crimes or offenses within the jurisdiction of a
10 general military court. Such courts-martial shall have the ~~same powers of punishment as~~
11 ~~general courts-martial except that fines imposed by such courts-martial shall not exceed one~~
12 ~~hundred dollars (\$100.00), and such courts-martial shall not have the power of dismissal from~~
13 ~~the national guard~~ power to impose punishments in like manner and to the extent prescribed by
14 the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be
15 in use by the armed forces of the United States at the time of the offense, except that no court
16 shall have the authority to impose confinement as part of a sentence."

17 **SECTION 4.** G.S. 127A-50 reads as rewritten:

18 "**§ 127A-50. Summary courts-martial.**

19 ~~In the national guard, not in the service of the United States, summary courts-martial may~~
20 ~~be appointed by the commander of any company, battery, detachment, squadron, or any other~~
21 ~~federally recognized unit, either army or air. Such court shall consist of one officer, who shall~~
22 ~~have the power to administer oaths and try enlisted personnel of each respective command for~~
23 ~~breaches of discipline and violations of laws governing such organizations. Such courts shall~~
24 ~~also have the power to impose fines not exceeding twenty five dollars (\$25.00) for any single~~
25 ~~offense, may sentence to forfeiture of pay and allowances, or may sentence enlisted personnel~~
26 ~~to reduction in rank; but in the case of noncommissioned officers above the fourth enlisted~~
27 ~~grade, may not adjudge reduction except to the next inferior grade. There shall be no right to~~
28 ~~demand trial by special court-martial.~~

29 In the national guard, not in the service of the United States, summary courts-martial may
30 be appointed by any of the following:

31 (1) Any person who may convene a general or special court-martial.

32 (2) The commander of a battalion, comparable or higher command of the North
33 Carolina army national guard, provided that such commander is an officer of
34 the grade of major or above.

35 (3) The commander of a detached squadron, comparable or higher command of
36 the North Carolina air national guard, provided that such commander is an
37 officer of the grade of major or above.

38 Such court shall consist of one officer who shall have the power to administer oaths and try
39 enlisted personnel of each respective command for breaches of discipline and violations of laws
40 governing such organizations. Such courts shall also have the power to impose punishments in
41 like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual
42 for Courts-Martial, United States, as shall be in use by the armed forces of the United States at
43 the time of the offense, except that no court shall have the authority to impose confinement as
44 part of a sentence. There shall be no right to demand trial by court-martial."

45 **SECTION 5.** G.S. 127A-50.1 reads as rewritten:

46 "**§ 127A-50.1. Military judges.**

47 The Adjutant General shall appoint military judges to preside over courts-martial of the
48 National Guard not in federal service. Minimum requirements for appointment as a military
49 judge shall be:are:

- 1 (1) ~~Licensed to practice law in this State or certified~~Certification as a military
2 judge by the Judge Advocate General of the Army, Air Force, Navy, ~~or~~
3 ~~Marines; Navy, Marines, or Coast Guard.~~
4 (2) Designation as a judge advocate by The Judge Advocate General of the
5 Army, Navy, ~~Air Force, or Marines; and~~Air Force, Marines, or Coast Guard.
6 (3) Membership in the North Carolina National Guard, the National Guard of
7 another state, or the active or reserve components of any of the military
8 services."

9 **SECTION 6.** G.S. 127A-51 reads as rewritten:

10 **"§ 127A-51. Nonjudicial punishment.**

11 Any commander of the national guard, not in the service of the United States, may, in
12 addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like
13 manner and to the extent prescribed by Article 15 of the Uniform Code of Military
14 ~~Justice,~~Justice and Manual for Courts-Martial, United States, as shall be currently in use by the
15 armed forces of the United States except that there shall be no right to demand trial by ~~special~~
16 court-martial."

17 **SECTION 7.** G.S. 127A-52 reads as rewritten:

18 **"§ 127A-52. Jurisdiction of courts-martial.**

19 The jurisdiction of courts-martial of the national guard, not in the service of the United
20 States, ~~except as to punishments,~~ shall be as prescribed by the Manual for Courts-Martial,
21 United States, as shall be currently in use by the armed forces of the United States. Such
22 courts-martial shall have jurisdiction to try accused persons for offenses committed while
23 serving without the State and while going to and returning from such service without the State
24 in like manner and to the same extent as while serving within the State."

25 **SECTION 8.** G.S. 127A-53 reads as rewritten:

26 **"§ 127A-53. Manual for Courts-Martial.**

27 Trials and proceedings by all courts and boards shall be in accordance with the ~~plans and~~
28 ~~procedures laid down in the~~ Manual for Courts-Martial, United States, as shall be currently in
29 use by the armed forces of the United States, except as modified by this Chapter."

30 **SECTION 9.** G.S. 127A-54 is repealed.

31 **SECTION 10.** G.S. 127A-55 reads as rewritten:

32 **"§ 127A-55. Forms for courts-martial procedure.**

33 In the national guard, not in the service of the United States, forms for courts-martial
34 procedure shall be substantially as those set forth in the Appendices, Manual for
35 Courts-Martial, United States, as shall be currently in use by the armed forces of the United
36 ~~States.~~States, with any modifications required by this Chapter."

37 **SECTION 11.** G.S. 127A-56 reads as rewritten:

38 **"§ 127A-56. Powers of courts-martial.**

39 In the national guard, not in the service of the United States, ~~presidents of courts-martial~~
40 ~~and summary court officers~~a military judge shall have power to issue warrants to arrest an
41 ~~accused persons~~person and to bring ~~them~~the person before ~~the~~a court for trial whenever such
42 ~~persons shall have~~person has disobeyed an order in writing from the convening authority to
43 appear before such court, a copy of the charge or charges having been delivered to the accused
44 with such order, ~~and to issue commitments in carrying out sentences of confinement,~~ and to
45 issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of
46 witnesses and the production of books, papers, records and other articles subject to a subpoena
47 duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions
48 before civil courts. He shall also have power to punish for contempt occurring in the presence
49 of the court.

50 In addition to the power to issue warrants set forth in the first paragraph of this section, the
51 arrest and confinement of persons subject to this ~~Chapter~~section may be accomplished by the

1 means and under the procedures set forth in Articles 9 and 10 of the Uniform Code of Military
2 Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed
3 forces of the United States."

4 **SECTION 12.** G.S. 127A-57 reads as rewritten:

5 **"§ 127A-57. Execution of processes and sentences.**

6 All warrants and other processes authorized by this Chapter and sentences of any of the
7 military courts of this State shall be executed by any sheriff, deputy sheriff, or ~~police~~
8 ~~officer~~State or local law enforcement officer into whose hands the same may be placed for
9 service or execution, and such officer shall make return thereof to the officer issuing or
10 imposing the same. Such service or execution of process or sentence shall be made by such
11 officer without tender or advancement of fee therefor; but all costs in such cases shall be paid
12 from funds appropriated for military purposes to the Department of Crime Control and Public
13 Safety. The actual necessary expenses of conveying a prisoner from one county in the State to
14 another, when the same is authorized and directed by the Adjutant General of the State, shall be
15 paid from the military funds of the State upon a warrant approved by the Adjutant General."

16 **SECTION 13.** G.S. 127A-58 is repealed.

17 **SECTION 14.** G.S. 127A-59 reads as rewritten:

18 **"§ 127A-59. ~~Commitments.~~Sentences.**

19 When any sentence ~~to fine or imprisonment~~ shall be imposed by any military court of this
20 State, it shall be the duty of the ~~president of said court, or summary court officer,~~military judge,
21 upon the approval of the findings and sentence of such court, to make out and sign a certificate
22 entitling the case, giving the name of the accused, the date and place of trial, the date of
23 approval of sentence, ~~the amount of fine or manner, place, and duration of confinement, and~~
24 ~~the terms of the sentence. If the court-martial was tried without a military judge, then any~~
25 military judge may make out and sign the certificate after reviewing the approved findings and
26 the sentence for compliance with this Chapter. The trial counsel shall deliver such certificate to
27 the sheriff, or deputy sheriff, or police officerclerk of court for the superior court of the county
28 wherein the sentence is to be executed, was imposed, or the Clerk of the Superior Court for
29 Wake County if the court-martial was held out of State, and it shall thereupon be the duty of
30 such officerthe clerk to take such actions as are necessary to carry said sentence into execution
31 in the manner prescribed by law for the collection of fines or commitment to service of terms of
32 imprisonment in criminal cases as determined in the courts of this State. The Administrative
33 Office of the Courts shall ensure that the State's criminal history records include pertinent
34 information relating to a court-martial under this Chapter in a like manner as a comparable
35 offense under the State's criminal laws would be recorded."

36 **SECTION 15.** G.S. 127A-60 reads as rewritten:

37 **"§ 127A-60. Sentence of ~~dismissal.~~dismissal or discharge.**

38 No sentence of dismissal from the service or ~~dishonorable discharge,~~discharge imposed by
39 a national guard court-martial not in the service of the United States, shall be executed until
40 approved by the Governor. Any officer convicted by a general court-martial and dismissed
41 from the service shall be forever disqualified from holding a commission in the militia."

42 **SECTION 16.** G.S. 127A-147 reads as rewritten:

43 **"§ 127A-147. Orders, rules, regulations and Uniform Code of Military Justice applicable**
44 **to militia when not in service of United States.**

45 The national guard, State defense militia and naval militia, when not in the service of the
46 United States, shall ~~except as to punishments,~~ be governed by State law, the orders, rules and
47 regulations of the Adjutant General, regulations promulgated by the secretary of the appropriate
48 service of the armed forces of the United States, and the Uniform Code of Military Justice, as
49 amended from time to time."

50 **SECTION 17.** G.S. 127A-153 reads as rewritten:

51 **"§ 127A-153. Protection of uniform.**

1 (a) The wearing of any military uniform of the United States government by members
2 of the militia shall be pursuant to applicable regulations promulgated by the respective armed
3 services of the United States and regulations of the Adjutant General of North Carolina not
4 inconsistent with federal uniform regulations.

5 (b) The wearing of any military uniform of the North Carolina State government by
6 members of the militia shall be pursuant to applicable regulations promulgated by the Adjutant
7 General of North Carolina.

8 (c) Members of the militia who violate the regulations referred to in (a) and (b) above
9 shall, upon conviction by a court-martial, be punished ~~by a fine not exceeding fifty dollars~~
10 ~~(\$50.00) or by imprisonment not exceeding 30 days, or by both fine and imprisonment, for each~~
11 ~~offense in like manner and to the extent prescribed by Article 134 of the Uniform Code of~~
12 Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed
13 forces of the United States at the time of the offense, except that no court shall have the
14 authority to impose confinement as part of a sentence.

15 (d) Persons not subject to courts-martial who violate the regulations referred to in (a)
16 and (b) above may be charged and tried in the State courts and upon conviction shall be
17 punished as provided in (c) above."

18 **SECTION 18.** This act becomes effective December 1, 2009, and applies to
19 offenses committed on or after that date.