

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH10814-MD-109 (03/25)

Short Title: Courts-Martial Amendments.

(Public)

Sponsors: Representative Martin.

Referred to:

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.



1 ~~(1)~~(3) The commander of a brigade, regiment, comparable or higher command of
2 the North Carolina army national ~~guard;~~guard, provided that such
3 commander is a general officer.

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

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

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

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

21 "**§ 127A-50. Summary courts-martial.**

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

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

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

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

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

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

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

49 "**§ 127A-50.1. Military judges.**

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

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

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

13 **"§ 127A-51. Nonjudicial punishment.**

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

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

21 **"§ 127A-52. Jurisdiction of courts-martial.**

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

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

29 **"§ 127A-53. Manual for Courts-Martial.**

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

33 **SECTION 9.** G.S. 127A-54 reads as rewritten:

34 **"§ 127A-54. Sentences; where executed.**

35 ~~All sentences to confinement imposed by any military court of this State shall be executed~~
36 ~~in such prisons as the court may designate.~~Persons sentenced to confinement by any military
37 court of this State shall be placed in the custody of the Department of Correction for service of
38 their sentence. Upon agreement by a local government and the Department of Correction, the
39 sentence may be served at a local government confinement facility with the expense of
40 confinement paid by the State."

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

42 **"§ 127A-55. Forms for courts-martial procedure.**

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

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

48 **"§ 127A-56. Powers of courts-martial.**

49 In the national guard, not in the service of the United States, ~~presidents of courts-martial~~
50 ~~and summary court officers~~a military judge shall have power to issue warrants to arrest an
51 accused persons ~~person~~ and to bring ~~them~~ the person before ~~the~~ a court for trial whenever such

1 ~~persons shall have~~person has disobeyed an order in writing from the convening authority to
2 appear before such court, a copy of the charge or charges having been delivered to the accused
3 with such order, ~~and to issue commitments in carrying out sentences of confinement,~~ and to
4 issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of
5 witnesses and the production of books, papers, records and other articles subject to a subpoena
6 duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions
7 before civil courts. He shall also have power to punish for contempt occurring in the presence
8 of the court.

9 In addition to the power to issue warrants set forth in the first paragraph of this section, the
10 arrest and confinement of persons subject to this Chapter may be accomplished by the means
11 and under the procedures set forth in Articles 9 and 10 of the Uniform Code of Military Justice,
12 Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the
13 ~~United States.~~States, except that no court shall have the authority to impose confinement as part
14 of a sentence."

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

16 **"§ 127A-57. Execution of processes and sentences.**

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

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

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

30 **"§ 127A-59. ~~Commitments.~~Sentences.**

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

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

49 **"§ 127A-60. Sentence of ~~dismissal.~~dismissal or discharge.**

50 No sentence of dismissal from the service or ~~dishonorable discharge,~~discharge imposed by
51 a national guard court-martial not in the service of the United States, shall be executed until

1 approved by the Governor. Any officer convicted by a general court-martial and dismissed
2 from the service shall be forever disqualified from holding a commission in the militia."

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

4 "**§ 127A-147. Orders, rules, regulations and Uniform Code of Military Justice applicable**
5 **to militia when not in service of United States.**

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

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

12 "**§ 127A-153. Protection of uniform.**

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

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

20 (c) Members of the militia who violate the regulations referred to in (a) and (b) above
21 shall, upon conviction by a court-martial, be punished ~~by a fine not exceeding fifty dollars~~
22 ~~(\$50.00) or by imprisonment not exceeding 30 days, or by both fine and imprisonment, for each~~
23 ~~offense in like manner and to the extent prescribed by Article 134 of the Uniform Code of~~
24 Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed
25 forces of the United States at the time of the offense, except that no court shall have the
26 authority to impose confinement as part of a sentence.

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

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