

April 9, 2009

**H 1412. COURTS-MARTIAL AMENDMENTS.** Filed 4/9/09. *TO MAKE VARIOUS CHANGES TO THE STATUTES RELATING TO NATIONAL GUARD COURTS-MARTIAL.*

Amends GS 127A-47, 127A-48 and 127A-49 to provide that courts-martial for national guard members in state service shall be similar to those provided by the Uniform Code of Military Justice and Manual for Courts-Martial, United States with similar punishment, except that no court shall have the power to impose confinement as part of a sentence. Further amends GS 127A-49 to provide that in the national guard in state service, special courts-martial may be appointed by any person who may convene a general court-martial, the Adjutant General of North Carolina, and specified commanders or officers in the North Carolina national guard provided that such commander or officer is a general officer. Amends GS 127A-50 by removing existing provisions and providing that in the national guard in state service, summary courts-martial may be appointed by any person who may convene a general or special court martial, any commander of a battalion, comparable or higher command of the North Carolina army national guard, provided that the commander is an officer of the grade of major or above, or any commander of a detached squadron, comparable or higher command of the North Carolina air national guard, provided that such commander is an officer of the grade of major or above. Such a court shall have the authority to impose similar punishments to those authorized by the uniform Code of Military Justice and Manual for Courts-Martial, United States, except that no court shall have the power to impose confinement as part of a sentence. Amends GS 127A-50.1 to include certification by the Coast Guard as one of the minimum requirements for appointment of as a military judge to preside over courts-martial of the National Guard and to remove the requirement of being licensed to practice in this state. Amends GS 127A-54 to provide that persons sentenced to confinement by any military court of the state shall be placed in the custody of the Department of Correction. Amends GS 127A-56 to give military judges the power to issue arrest warrants in the state national guard. Amends GS 127A-57 to provide that warrants and other processes authorized by GS Chapter 127A may be executed by any State or local law enforcement officer with costs being paid from funds appropriated to the Department of Crime Control and Public Safety. Also makes changes to GS 127A-59, which deals with the records of sentences imposed by military courts of the state. A certification of the sentence shall be signed by the military judge providing over the trial or in a trial without a judge by any military judge who reviews the case for compliance with proper procedures. The certificate is no longer to be delivered to local law enforcement officers, but to the clerk of court for the superior court of the county wherein the sentence was imposed. In addition, the Administrative Office of the Courts is to ensure that pertinent information relating to a court-martial will be recorded in the state's criminal history records just as they would for a comparable offense under the state's criminal code. Amends GS 127A-153(c) to provide that any person who violates regulations relating to the wearing of any military uniform of the United States or North Carolina state government may be punished in like manner to punishments allowed by the uniform Code of Military Justice and Manual for Courts-Martial, United States, except that no court shall have the power to impose confinement as part of a sentence. Repeals GS 127A-58 (sentence of confinement). Applies to offenses committed on or after December 1, 2009.

**Intro. by Martin.**

GS 127A

May 6, 2009

**H 1412. COURTS-MARTIAL AMENDMENTS.** Filed 4/9/09. House committee substitute makes the following changes to 1st edition. Repeals GS 127A-54 regarding execution of sentences by military courts. Deletes provision that would have amended GS 127A-56 to prohibit military court from imposing confinement as part of a sentence. Deletes provision in GS 127A-57 requiring payment from military funds of expenses of conveying prisoner from one county to another. Makes additional technical changes.

June 29, 2010

**H 1412. COURTS-MARTIAL AMENDMENTS.** Filed 4/9/09. Senate committee substitute makes the following changes to 2nd edition.

Amends GS 127A-47 to remove language prohibiting courts in court-martials for organizations of the National Guard not in the service of the United States (National Guard) from having the power to impose confinement as part of a sentence.

Amends GS 127A-48 to provide that under general courts-martial of the National Guard that no court has the authority to impose confinement as part of the sentence unless the court consists of a military judge and not less than five members; however, permits sentencing to confinement if the defendant requests a trial by military judge only. Prohibits the court from imposing confinement of more than one year and a day as part of a sentence.

Amends GS 127A-49 to remove provisions permitting special courts-martial in the National Guard to be appointed by (1) any person who may convene a general court-martial and (2) the Adjutant General of North Carolina. Limits special courts-martial to imposing confinement as a part of the sentence unless the court consisted of a military judge and no less than three members; however, permits sentencing to confinement if the defendant requests a trial by military judge only. Prohibits the court from imposing confinement in excess of six months as part of a sentence.

Amends GS 127A-54, instead of repealing the statute, to add provisions regarding pretrial confinement. Provides that a defendant may be placed under confinement after arrest in a local government confinement facility; however, also provides that the provisions of Article 26 of Chapter 15A apply as if the defendant had been confined for an alleged violation of criminal laws. Specifies that this section is not to be construed as abridging the right of habeas corpus. Provides additional specifications governing the confinement of a court-martial defendant including allocation of costs and reimbursements, and facilities for confinement. Deletes broad statement providing that all sentences imposed by a military court of North Carolina are to be executed in prisons as the court may designate.

Amends GS 127A-56 to reinstate the authority of the presidents of courts-martial and summary court officers to issue warrants for arrests and bring accused persons before the court (was, amended in 2nd edition to grant the authority to a military judge). Deletes provision permitting the arrest and confinement of persons subject to GS Chapter 127A under the means and procedures set out in Articles 9 and 10 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States.

Amends GS 127A-59. Changes the catch line to *sentences* (was, commitments). Reinstates provision that it is the duty of the military judge, president of the military court, or summary court officer to make out and sign the certificate entitling the case whenever a defendant is *sentenced to a fine or imprisonment by a military court of the state* (was deleted in the 2nd edition). Directs the trial counsel to deliver the certificate to the Clerk of Superior Court in Wake County (was, deliver to the clerk of superior court of the county where the sentence was imposed or the Clerk of Superior Court in Wake County if the court-martial was held out of state).

Amends GS 127A-60. Changes the catch line to *approval of sentence* (was, sentence of dismissal). Provides that a sentence imposed by a special or general court-martial of the National Guard may not be executed until it is approved by the Governor.

Enacts new GS 127A-62 to provide a right of appeal to the Wake County Superior Court in court-martial judgments that include a sentence of confinement. Provides that GS 15A-1451 applies to appeals under this statute. Provides criteria for filing and service. Defines what constitutes errors and specifies errors that must be asserted or deemed to be waived. Directs that the case be heard by a Superior Court Judge assigned by the Chief Justice of the North Carolina Supreme Court. Provides additional details as to applicable law, setting aside findings or sentence, and hearings and rehearings. Directs the Staff Judge Advocate of the NC National Guard to designate a qualified judge advocate that is certified under Article 27(b) of the Uniform Code of Military Justice and is a member of the North Carolina Bar to represent the defendant and a judge advocate with the same qualifications to represent the state. Provides additional guidelines governing the selection of counsel for the appeal. Provides that review of decisions by Wake County Superior Court is to be subject to GS 7A-31.1. Directs that the rules for practice and procedure for review of courts-martial by the Wake County Superior Court are to be consistent with rules for practice and procedure for review prescribed for review of administrative appeals by the Superior Court, except as modified by this statute.

Amends GS 7A-27(b) to provide that the right of appeal from any final judgment of a superior court does not apply a final judgment entered upon review of a court-martial under proposed GS 127A-62.

Amends GS 7A-28 to provide that Court of Appeals decisions rendered upon review of courts-martial under proposed GS 127A-62 are final and not subject to additional review in the Supreme Court by appeal, motion, certification, writ, or otherwise. Makes conforming changes to the catch line. Makes conforming changes to GS 7A-31 (discretionary review by the Supreme Court).

Enacts new GS 7A-31.1 to provide for discretionary review of a court-martial case that has been appealed to the Wake County Superior Court under proposed GS 127A-62. Provides that the Court of Appeals may on motion of any party or its own motion, certify the court-martial case for review at its discretion, after the case has been reviewed by the Wake County Superior Court. Provides that certification by the Court of Appeals may be made in causes where in the opinion of the Court of Appeals: (1) the subject matter of the appeal has significant public interest; (2) the cause involves legal principles of major significance to the jurisprudence of the state; or (3) the decision of the Wake County Superior Court appears likely to be in conflict with a decision of the United States Court of Appeals for the Armed Forces. Prescribes that any rules for practice and procedure for review of courts martial are subject to the provisions of GS 7A-33.

Provides that the act becomes effective December 1, 2010 (was, December 1, 2009). Also provides that the requirement in GS 127A-59, as amended, that the Administrative Office of the Courts electronically record certain data becomes effective after the next rewrite of the superior court clerks system by the AOC and that until such time, paper copies of the required criminal history records are to be kept on file in the Wake County Courthouse.

Makes additional stylistic, conforming, and technical changes.

August 12, 2010

**SL 2010-193 (H 1412). COURTS-MARTIAL AMENDMENTS. AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES RELATING TO NATIONAL GUARD COURTS-MARTIAL.** Summarized in *Daily Bulletin* 4/9/09, 5/6/09, and 6/29/10. Enacted August 4, 2010. Effective December 1, 2010.