

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1412  
PROPOSED COMMITTEE SUBSTITUTE H1412-PCS30349-RK-42

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.



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 is repealed.

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

35 **"§ 127A-55. Forms for courts-martial procedure.**

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

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

41 **"§ 127A-56. Powers of courts-martial.**

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

1 before civil courts. He shall also have power to punish for contempt occurring in the presence  
2 of the court.

3 In addition to the power to issue warrants set forth in the first paragraph of this section, the  
4 arrest and confinement of persons subject to this ~~Chapter~~ section may be accomplished by the  
5 means and under the procedures set forth in Articles 9 and 10 of the Uniform Code of Military  
6 Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed  
7 forces of the United States."

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

9 **"§ 127A-57. Execution of processes and sentences.**

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

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

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

22 **"§ 127A-59. ~~Commitments.~~ Sentences.**

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

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

41 **"§ 127A-60. Sentence of ~~dismissal.~~ dismissal or discharge.**

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

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

47 **"§ 127A-147. Orders, rules, regulations and Uniform Code of Military Justice applicable**  
48 **to militia when not in service of United States.**

49 The national guard, State defense militia and naval militia, when not in the service of the  
50 United States, shall ~~except as to punishments,~~ be governed by State law, the orders, rules and  
51 regulations of the Adjutant General, regulations promulgated by the secretary of the appropriate

1 service of the armed forces of the United States, and the Uniform Code of Military Justice, as  
2 amended from time to time."

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

4 "**§ 127A-153. Protection of uniform.**

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

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

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

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

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