

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1412

Short Title: Courts-Martial Amendments. (Public)

Sponsors: Representatives Martin, Glazier (Primary Sponsors); and Lucas.

Referred to: Homeland Security, Military, and Veterans Affairs, if favorable, Judiciary I.

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 reads as rewritten:

31 **"§ 127A-54. Sentences; where executed.**

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

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

39 **"§ 127A-55. Forms for courts-martial procedure.**

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

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

45 **"§ 127A-56. Powers of courts-martial.**

46           In the national guard, not in the service of the United States, ~~presidents of courts-martial~~  
47 ~~and summary court officers~~a military judge shall have power to issue warrants to arrest an  
48 ~~accused persons~~person and to bring ~~them~~the person before ~~the~~a court for trial whenever such  
49 ~~persons shall have~~person has disobeyed an order in writing from the convening authority to  
50 appear before such court, a copy of the charge or charges having been delivered to the accused  
51 with such order, ~~and to issue commitments in carrying out sentences of confinement,~~ and to

1 issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of  
2 witnesses and the production of books, papers, records and other articles subject to a subpoena  
3 duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions  
4 before civil courts. He shall also have power to punish for contempt occurring in the presence  
5 of the court.

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

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

13 **"§ 127A-57. Execution of processes and sentences.**

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

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

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

27 **"§ 127A-59. Commitments.Sentences.**

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

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

46 **"§ 127A-60. Sentence of dismissal,dismissal or discharge.**

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

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

1 "§ 127A-147. Orders, rules, regulations and Uniform Code of Military Justice applicable  
2 to militia when not in service of United States.

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

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

9 "**§ 127A-153. Protection of uniform.**

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

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

17 (c) Members of the militia who violate the regulations referred to in (a) and (b) above  
18 shall, upon conviction by a court-martial, be punished ~~by a fine not exceeding fifty dollars~~  
19 ~~(\$50.00) or by imprisonment not exceeding 30 days, or by both fine and imprisonment, for each~~  
20 ~~offense in like manner and to the extent prescribed by Article 134 of the Uniform Code of~~  
21 Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed  
22 forces of the United States at the time of the offense, except that no court shall have the  
23 authority to impose confinement as part of a sentence.

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

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