SPONSOR: Rep. Jaques & Sen. Townsend
Reps. Carson, Lynn, Mulrooney, Paradee, Viola; Sens. Ennis, Hocker

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 22
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 20 OF THE DELAWARE CODE RELATING TO THE DELAWARE NATIONAL GUARD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subchapter IV, Chapter 1 of Title 20 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 151 Kinds of courts-martial; procedures; jurisdiction; Military Judges; Judge Advocates.

(a) Courts-martial shall be of 3 kinds: general, special and summary. These courts shall be constituted like similar courts-martial of the Army and Air Force of the United States to the extent practicable.

(1) Convictions by general and special courts-martial will be recorded in accordance with section 8508 of Title 11 and the rules and regulations promulgated by the DELJIS Board of Directors.

(2) Any conviction by a summary court-martial or by non-judicial punishment is not a criminal conviction and not reportable and shall not be transmitted pursuant to § 8508 of Title 11.

(b) These courts-martial shall have the jurisdiction and powers as specified in regulations adopted and promulgated by the Adjutant General that shall conform as far as practicable to the Uniform Code of Military Justice (10 U.S.C. § 801 et seq.) ("UCMJ") and the Manual for Courts-Martial of the United States so long as not inconsistent with the provisions of this subchapter.

(1) This subchapter applies to all members of the state military forces at all times even outside the State. Subject matter jurisdiction under this subchapter is established if a nexus exists between an offense, either "military only" or "military," and the state military force.

(2) The Punitive Articles (Part IV) of the Manual for Courts-Martial and Subchapter X of the UCMJ (collectively known as "Articles") constitute prosecutable offenses. Any offense prosecuted by a general or special court-martial shall constitute a misdemeanor offense. Any offense prosecuted by a summary court-martial or by non-judicial punishment is not a criminal offense.

a. The term "military only offense" means those offenses prescribed under articles 77 (Principals), 78 (Accessory after the fact), 80 (Attempts), 81 (Conspiracy), 82 (Solicitation), 83 (Fraudulent enlistment, appointment, or separation), 84 (Unlawful enlistment, appointment, or separation), 85 (Desertion), 86 (Absence without leave), 87 (Missing movement), 88 (Contempt toward officials), 89 (Disrespect towards superior commissioned officer), 90 (Assaulting or willfully disobeying superior commissioned officer), 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer), 92 (Failure to obey order or regulation), 93 (Cruelty and maltreatment), 94 (Mutiny or sedition), 95 (Resistance, flight, breach of arrest, and escape), 96 (Releasing prisoner without proper authority), 97 (Unlawful detention), 98 (Noncompliance with procedural rules), 99 (Misbehavior before the enemy), 100 (Subordinate compelling surrender), 101 (Improper use of countersign), 102 (Forcing a safeguard), 103 (Captured or abandoned property), 104 (Aiding the enemy), 105 (Misconduct as prisoner), 107 (False official statements), 108 (Military property – Loss, damage, destruction, or wrongful disposition), 109 (Property other than military property – Waste, spoilage, or destruction), 110 (Improper hazarding of vessel), 112 (Drunk on duty), 112a. (Wrongful use, possession, etc., of controlled substances), 113 (Misbehavior of sentinel), 114 (Dueling), 115 (Malingering), 116 (Riot or breach of peace), 117 (Provoking speeches or gestures), 132 (Frauds against the government), 133 (Conduct unbecoming an officer and a gentleman), 134 (General article) and any other offense listed under the Articles without a civilian equivalent.

b. The term "military offense" means those offenses prescribed under articles 111 (Drunken or reckless operation of a vehicle, aircraft, or vessel), 118 (Murder), 119 (Manslaughter), 120 (Rape and sexual assault), 120a (Stalking), 120c (Other sexual misconduct), 121 (Larceny and wrongful appropriation), 122 (Robbery), 123 (Forgery), 123a (Making, drawing, or uttering check, draft or order without sufficient funds), 124 (Maiming), 126 (Arson), 127 (Extortion), 128 (Assault), 129 (Burglary), 130 (Housebreaking), and 131 (Perjury).

c. The Articles and the implementing regulations adopted by the Adjutant General shall be of the same force and effect as if they had been set forth at length in this section.

(3) When an act or omission constitutes a violation of both this subchapter and another law of Delaware or local, municipal law or ordinance foreign or domestic, a court-martial may be initiated only after the Attorney General or other civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached.

(c) These courts shall use the forms and procedures as established for similar courts of the Army and Air Force of the United States, as adopted by regulation by the Adjutant General and which regulations shall conform as far as practicable to the Uniform Code of Military Justice (10 U.S.C. § 801 et seq.) ("UCMJ") and the Manual for Courts-Martial of the United States.

~~(d) Any charge shall be prosecuted under 1 or more articles of the Uniform Code of Military Justice, except as specifically excluded by regulation of the Adjutant General. These articles, and the adopting regulations of the Adjutant General shall be of the same force and effect in any proceeding before any court-martial of this state as if the same had been enacted at length in this section.~~

~~(e)~~ (d) The Adjutant General may designate 1 or more officers of the Delaware National Guard who is/are qualified members of the Judge Advocate General Corps as "Military Judge" for state military justice purposes.

~~(f) The Adjutant General may appoint 1 or more officers of the Delaware National Guard who is/are qualified members of the Judge Advocate General Corps as "Military Judge for Court of Military Review" for the purpose of reviewing the legal sufficiency of any court-martial and making a recommendation to the Adjutant General as to final action on the court-martial proceedings.~~

(e) The Delaware National Guard Judge Advocate General Corps shall have responsibility to prosecute military offenses and military only offenses in a trial by courts-martial. Members of the Delaware National Guard Judge Advocate General Corps must be members in good standing of the bar of the highest court of a state and certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, Marine Corps, or Coast Guard, or a reserve component of one of these.

(f) Any person convicted of a military offense or a military only offense in a court-martial pursuant to this section may appeal a final decision of a general or special courts-martial to the Delaware Superior Court in accordance with the laws of Delaware. A decision of a general or special courts-martial becomes final on the date a sentence is acted upon as specified in sections 152 and 155 of this subchapter, or, when approval of the Governor is also required as specified in section 156 of this subchapter, on the latter date that the Governor approves the sentence. In accordance with Rule 39(a) of the Rules of Criminal Procedure for the Superior Court of the State of Delaware, all appeals to the Delaware Superior Court shall be taken within 15 days from the date the general or special courts-martial decision becomes final. In addition to the time restriction in Rule 39(a) of the Rules of Criminal Procedure for the Superior Court of the State of Delaware, Rule 39(c) "On the record", and (h) "Dismissal" shall apply in any appeal of a general or special courts-martial. If, however, the Delaware Adjutant General was not the convening authority of a special court-martial, the defendant must first appeal the decision of a special court-martial to the Delaware Adjutant General within 15 days of the date the convening authority acts

upon the sentence, and once the Delaware Adjutant General has rendered a final decision, may further appeal to the Delaware Superior Court in accordance with the laws of Delaware.

§ 152. General courts-martial.

(a) The Governor or Adjutant General may convene a general court-martial by appropriate order.

(b) A general court-martial may impose a sentence of:

(1) A fine of not more than the member's pay and allowances for 24 unit training assemblies;

(2) Forfeiture of the member's pay and allowances for up to 24 unit training assemblies;

(3) A reprimand;

(4) Dismissal, dishonorable discharge or a bad conduct discharge;

(5) Reduction of any noncommissioned officer or enlisted person to any rank; ~~or~~

(6) A sentence of confinement in accordance with the limitations set forth in § 155 of this subchapter; or

(7) Any combination of these punishments.

(c) Any sentence imposed by a general court-martial shall not become effective until ~~approved~~ acted upon by the Adjutant General in accordance with the Manual for Courts-Martial of the United States.

§ 153. Special courts-martial.

(c) Any sentence imposed by a special court-martial shall not become effective until acted upon by the convening authority in accordance with the Manual for Courts-Martial of the United States.

§ 154. Summary courts-martial.

(c) Any sentence imposed by a summary court-martial shall not become effective until acted upon by the convening authority in accordance with the Manual for Courts-Martial of the United States.

§ 155. ~~Confinement~~ Penalties.

(a) When not in federal service under Title 10 of the United States Code, ~~a general or special court-martial may, instead of imposing a fine or forfeiture, sentence to confinement for 1 day for each unit training assembly~~ the punishment which a court-martial may direct for an offense shall not exceed such limits as prescribed by the UCMJ subject to the limitations in this section.

(b) For all offenses, the penalty shall be as provided in the UCMJ except that the maximum sentence of confinement shall not exceed one (1) year.

~~(b)~~(c) Any sentence to incarceration by a general or special court-martial shall not be executed until ~~approved by~~ acted upon by the ~~Adjutant General~~ convening authority in accordance with the Manual for Courts-Martial of the United States.

~~(c) Any sentence to incarceration by a general or special court-martial shall be required to be served only when the service member is on regular duty on annual training or has already been activated for state service under subchapter V of this chapter.~~

(d) The Department of Correction shall receive and confine all military offenders committed to its custody by order of court-martial approved by the Adjutant General.

§ 156. Sentences which require Governor's approval.

When not in federal service under Title 10 of the United States Code, sentence of dismissal or dishonorable or bad conduct discharge from the service imposed by court-martial shall not be executed until approved by the Governor.

§ 159. Payment of fines.

(a) Upon approval of the sentence of any court-martial to pay a fine by the court-martial convening authority, the fine so imposed shall be immediately due and payable to the ~~Delaware National Guard Courts-Martial~~ State of Delaware General Fund, through the commander of the member's unit to be forwarded to the Adjutant General.

(b) Any fine or forfeiture imposed by sentence of court-martial or non-judicial punishment collected by the Adjutant General shall be paid over to the Delaware National Guard ~~Courts-Martial~~ Central Fund.

§ 163. Nonjudicial punishment.

Any commanding officer of the Delaware National Guard, not in federal service under Title 10 of the United States Code, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in a like manner and to the extent prescribed by Article 15 of the ~~Uniform Code of Military Justice,~~ UCMJ and the Manual for Courts-Martial, United States, ~~1968~~ 2012, as amended, as adopted by regulation of the Delaware National Guard.