

SENATE BILL NO. 2131

Introduced by

Government and Veterans Affairs Committee

(At the request of the Adjutant General)

1 A BILL for an Act to amend and reenact sections 37-01-03, 37-09-01, 37-09-02, 37-09-04,
2 37-09-05, 37-09-06, 37-09-08, 37-09-09, 37-09-12, and 37-09-14 of the North Dakota Century
3 Code, relating to application of the uniform code of military justice to the North Dakota national
4 guard and military courts within the North Dakota national guard; and to repeal sections
5 37-09-03 and 37-09-13 of the North Dakota Century Code, relating to military courts of inquiry
6 and court-martial sentences.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 37-01-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **37-01-03. Articles of uniform code of military justice applicable in state -**
11 **Regulations governing - Punishment for offenses while on duty.** The articles of uniform
12 code of military justice governing the armed forces of the United States as codified in the
13 manual for courts-martial, United States, 1995 edition, now ~~or hereafter~~ in effect, are a part of
14 this title so far as the same are applicable and not modified by any provision of this title. A
15 person who commits an offense while on duty may be tried by a court-martial lawfully appointed
16 even after such duty has terminated, and if found guilty, the accused must be punished
17 according to the articles of uniform code of military justice and the rules and regulations
18 governing the armed forces of the United States and within the limits prescribed in this title and
19 by federal law for the courts-martial in the national guard. In any case in which the person
20 alleged to have committed the offense could be charged either under the code of military justice
21 or the civil law of this state, the officer whose duty it is to approve such charge, in his discretion,
22 may order the person charged or subject to being charged to be turned over to the civil
23 authorities for trial. Whenever reference is made to the articles of uniform code of military
24 justice, to the military service, or to the armed forces of the United States, such reference shall

1 be deemed to include the military service of this state. The intent of this title and of all laws of
2 this state affecting the military forces is to conform to all acts and regulations of the United
3 States affecting the same subjects, and all laws of this state shall be construed to effect this
4 purpose.

5 **SECTION 2. AMENDMENT.** Section 37-09-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **37-09-01. Military courts.** The military courts of this state for the national guard are:

- 8 1. ~~Courts of inquiry.~~
- 9 2. General courts-martial.
- 10 ~~3.~~ 2. Special courts-martial.
- 11 ~~4.~~ 3. Summary courts-martial.

12 **SECTION 3. AMENDMENT.** Section 37-09-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **37-09-02. Powers and procedure of military courts.** The military courts of this state
15 must be constituted the same, have cognizance of the same subjects, and shall possess the
16 same powers, except as to punishment, as similar courts provided for by the laws and
17 regulations governing the army of the United States. The proceedings of courts of inquiry and
18 courts-martial of the national guard must follow the forms and modes of procedure prescribed
19 ~~for such similar courts~~ in the manual for courts-martial, United States, 1995 edition.

20 **SECTION 4. AMENDMENT.** Section 37-09-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **37-09-04. General courts-martial - Convening - Powers.** A general court-martial
23 may be convened by order of the governor or the adjutant general. Such court may sentence
24 any member to:

- 25 1. ~~Impose fines~~ A fine not exceeding two five hundred dollars upon the accused
26 person for a single offense;
- 27 2. ~~Sentence an accused person to forfeiture~~ Forfeiture of pay and allowances of not
28 more than five hundred dollars for a single offense;
- 29 3. ~~Reprimand an accused person~~ A reprimand;
- 30 4. ~~Dismiss~~ Dismissal or dishonorably bad conduct discharge, or dishonorable
31 discharge an accused person from the service; or

- 1 5. ~~Reduce a noncommissioned officer~~ Reduction of an enlisted member to the ranks,
2 and it may combine any two or more of such punishments in any sentence
3 imposed by it: any lower rank;
4 6. Confinement of not more than one hundred eighty days; or
5 7. Any combination of these punishments.

6 **SECTION 5. AMENDMENT.** Section 37-09-05 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **37-09-05. Special courts-martial - Appointment - Jurisdiction - Punishment.** The
9 commanding officer, with a rank of at least colonel (0-6), of each garrison, fort, post, camp, or
10 other place, or of any brigade, regiment, detached battalion, or other detached command, may
11 appoint special courts-martial for ~~his~~ the officer's command. A special court-martial may be
12 appointed in any case by a superior authority when it is deemed desirable by the ~~latter~~ superior
13 authority. A special court-martial may try any person, except a commissioned officer, subject to
14 the military law, for any crime or offense made punishable by the military laws of the United
15 States, and has the same powers of punishment as a general court-martial except that fines
16 imposed by a special court-martial may not exceed ~~one~~ three hundred dollars and a sentence
17 of confinement may not exceed one hundred days. A bad conduct discharge may not be
18 adjudged unless a complete record of the proceedings and testimony has been made, counsel
19 was detailed to represent the accused, and a military judge was detailed to the trial.

20 **SECTION 6. AMENDMENT.** Section 37-09-06 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **37-09-06. Summary courts-martial - Appointment - Powers - Proceedings.** The
23 commanding officer, with a rank of at least colonel (0-6), of each garrison, fort, post, or other
24 place, or of any regiment, corps, detached battalion, company, or other detachment, may
25 appoint for such place or command a summary court to consist of one officer, who shall have
26 power to administer oaths and to try the enlisted ~~men~~ members of such place or command for
27 breaches of discipline and violations of laws governing such organization. Such court, when
28 satisfied of the guilt of a soldier, may:

- 29 1. Impose a fine ~~upon him~~ in an amount not exceeding ~~twenty-five~~ two hundred
30 dollars for any single offense;

- 1 2. Sentence ~~him, if he is a noncommissioned officer~~ an enlisted member, to reduction
- 2 to the ranks; ~~or~~
- 3 3. Sentence ~~him~~ an enlisted member to forfeiture of pay and allowances not to
- 4 exceed two hundred dollars for a single offense; or
- 5 4. Any combination of these punishments.

6 The proceedings of such court must be informal, and the minutes of the court must be the same
7 as those prescribed for summary courts of the United States army.

8 **SECTION 7. AMENDMENT.** Section 37-09-08 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **37-09-08. Commitment to prison or jail pending trial - Bail allowed.** Whenever an
11 accused person has been arrested for failure to appear before a court-martial for trial as
12 provided in this chapter, the president of the court-martial or the summary court officer to whom
13 the charges have been referred for trial may issue a warrant to a civil officer for the commitment
14 of such person to prison or jail pending trial. In all such cases, the accused must be admitted to
15 bail, the amount of bail fixed, and the surety or sureties thereon approved by the president of
16 the court-martial or by the summary court officer issuing the warrant. In default of bail, such
17 person must be confined pending trial. ~~No person, however, may be kept in prison or jail~~
18 ~~pending trial for more than five days.~~

19 **SECTION 8. AMENDMENT.** Section 37-09-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **37-09-09. Powers of president of ~~court of inquiry~~, court-martial; and summary**
22 **court officer.** A president ~~of a court of inquiry~~, of a court-martial; and a summary court officer
23 may:

- 24 1. Issue subpoenas.
- 25 2. Enforce the attendance of witnesses and the production of books and papers.
- 26 3. ~~Sentence for a refusal to be sworn or to answer as is provided in civil courts.~~

27 **SECTION 9. AMENDMENT.** Section 37-09-12 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **37-09-12. Sentence imposing confinement - Execution.** Any portion of a sentence
30 imposed by a military court that prescribes confinement must be executed in such ~~county jail~~
31 facility as the reviewing authority may direct. The expenses of such confinement must be borne

1 by the state of North Dakota. A commitment in writing must be executed by the presiding
2 officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but
3 ~~where~~ if the confinement is the result of the confirmed action of the reviewing authority, an
4 official copy of the order publishing the sentence of the court must be furnished to the sheriff or
5 jailer.

6 **SECTION 10. AMENDMENT.** Section 37-09-14 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **37-09-14. Sentence of court-martial to be approved.** ~~No~~ A sentence of any
9 court-martial ~~becomes~~ is not effective until approved by the convening authority. ~~No~~ A
10 sentence of dismissal from the service or dishonorable discharge imposed by a court-martial
11 may not be executed until approved by the governor or the adjutant general.

12 **SECTION 11. REPEAL.** Sections 37-09-03 and 37-09-13 of the North Dakota Century
13 Code are repealed.