

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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, 1984 (1998 edition), now ~~or hereafter~~ in effect, are a  
14 part of this title so far as the same are applicable and not modified by any provision of this title.

15 A person who commits an offense while on duty may be tried by a court-martial lawfully  
16 appointed even after such duty has terminated, and if found guilty, the accused must be  
17 punished according to the articles of uniform code of military justice and the rules and  
18 regulations governing the armed forces of the United States and within the limits prescribed in  
19 this title and by federal law for the courts-martial in the national guard. In any case in which the  
20 person alleged to have committed the offense could be charged either under the code of  
21 military justice or the civil law of this state, the officer whose duty it is to approve such charge,  
22 in his discretion, may order the person charged or subject to being charged to be turned over to  
23 the civil authorities for trial. Whenever reference is made to the articles of uniform code of  
24 military justice, to the military service, or to the armed forces of the United States, such

1 reference shall be deemed to include the military service of this state. The intent of this title  
2 and of all laws of this state affecting the military forces is to conform to all acts and regulations  
3 of the United States affecting the same subjects, and all laws of this state shall be construed to  
4 effect this 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, 1984 (1998 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  
7    same 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  
15    to 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

1 borne 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.