

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2131
(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-01-03, 37-09-01, 37-09-02, 37-09-04, 37-09-05, 37-09-06, 37-09-08, 37-09-09, 37-09-12, and 37-09-14 of the North Dakota Century Code, relating to application of the uniform code of military justice to the North Dakota national guard and military courts within the North Dakota national guard; and to repeal sections 37-09-03 and 37-09-13 of the North Dakota Century Code, relating to military courts of inquiry and court-martial sentences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty. The articles of uniform code of military justice governing the armed forces of the United States as codified in the Manual for Courts-Martial, United States, 1984 (1998 edition), now ~~or hereafter~~ in effect, are a part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on duty may be tried by a court-martial lawfully appointed even after such duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States and within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in his discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of this state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

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

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

1. ~~Courts of inquiry.~~
2. General courts-martial.
3. 2. Special courts-martial.
4. 3. Summary courts-martial.

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

37-09-02. Powers and procedure of military courts. The military courts of this state must be constituted the same, have cognizance of the same subjects, and shall possess the same powers, except as to punishment, as similar courts provided for by the laws and regulations governing the army of the United States. The proceedings of ~~courts of inquiry and~~ courts-martial of the national guard must

follow the forms and modes of procedure prescribed ~~for such similar courts~~ in the Manual for Courts-Martial, United States, 1984 (1998 edition).

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

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

1. ~~Impose fines~~ A fine not exceeding ~~two~~ five hundred dollars ~~upon the accused person for a single offense;~~
2. ~~Sentence an accused person to forfeiture~~ Forfeiture of pay and allowances of not more than five hundred dollars for a single offense;
3. ~~Reprimand an accused person~~ A reprimand;
4. ~~Dismiss~~ Dismissal or ~~dishonorably~~ bad conduct discharge, or dishonorable discharge ~~an accused person from the service; or~~
5. ~~Reduce a noncommissioned officer~~ Reduction of an enlisted member to the ranks, and ~~it may combine any two or more of such punishments in any sentence imposed by it.~~ any lower rank;
6. Confinement of not more than one hundred eighty days; or
7. Any combination of these punishments.

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

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

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

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

1. Impose a fine ~~upon him~~ in an amount not exceeding ~~twenty-five~~ two hundred dollars for any single offense;
2. Sentence ~~him, if he is a noncommissioned officer~~ an enlisted member, to reduction to the ranks; or

3. Sentence ~~him~~ an enlisted member to forfeiture of pay and allowances not to exceed two hundred dollars for a single offense; or
4. Any combination of these punishments.

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

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

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

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

37-09-09. Powers of president of ~~court of inquiry, court-martial, and summary court officer.~~ A president ~~of a court of inquiry, of a court-martial, and a summary court officer~~ may:

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

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

37-09-12. Sentence imposing confinement - Execution. Any portion of a sentence imposed by a military court that prescribes confinement must be executed in such ~~county jail facility~~ county jail facility as the reviewing authority may direct. The expenses of such confinement must be borne by the state of North Dakota. A commitment in writing must be executed by the presiding officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but ~~where~~ if the confinement is the result of the confirmed action of the reviewing authority, an official copy of the order publishing the sentence of the court must be furnished to the sheriff or jailer.

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2131.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 94 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State