

BILL ANALYSIS

H.B. 1165
By: Flynn
Defense & Veterans' Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As Texas' military forces become more active in domestic missions, the Texas Code of Military Justice needs an update to better reflect the federal Uniform Code of Military Justice.

H.B. 1165 updates procedures and protocol for provisions of the Texas Code of Military Justice relating to nonjudicial punishment and courts-martial.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the governor is transferred to the adjutant general in SECTION 5 of this bill.

ANALYSIS

H.B. 1165 amends the Government Code to authorize any commanding officer to impose a disciplinary punishment on a member of the state military forces for an offense without the intervention of a court-martial, under regulations authorized to be prescribed by the adjutant general, rather than the governor. The bill removes the regulatory authority of the governor as it relates to placing limitations on nonjudicial punishments, and an exception to the prohibition of punishment in the case of a member attached to or embarked in a vessel if the member, before the punishment's imposition, demands trial by court-martial. The bill includes the adjutant general and an officer of a flag rank among those authorized to delegate the powers under these provisions to a principal assistant and specifies that this assistant be a member of Texas's military forces. The bill requires that any person facing discipline under provisions concerning nonjudicial punishment be afforded the opportunity to consult with, rather than be represented by, qualified defense counsel.

H.B. 1165 removes provisions relating to disciplinary punishments the governor or an officer of general rank in command may impose for minor offenses without the intervention of a court-martial and punishments in the same circumstances imposed by a commanding officer on other personnel of his command. The bill authorizes a commanding officer to impose on an enlisted member of the officer's command a reprimand; a fine of not more than two days' pay for any commanding officer, three days' pay for a commanding officer of the grade O-4 or above, and four days' pay for a commanding officer of the grade of O-6 or above; restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, rather than 30 days; or reduction in the member's pay grade based on the enlisted member's grade and the commanding officer's grade.

H.B. 1165 authorizes the governor, the adjutant general, a component commander, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command to impose on an enlisted member in a pay grade of E-7 of the officer's command a reprimand; a fine of not more than four days' pay; restriction to certain specified limits, with or without suspension from duty, for not more than 60 days; or reduction of not more than two pay grades. The bill authorizes the governor, the adjutant general, or a component commander to

impose these same punishments on an enlisted member in a pay grade of E-8 or E-9 of the officer's command, or, on an officer of the officer's command, a reprimand; a fine of not more than four days' pay; restriction to certain specified limits, with or without suspension from duty, for not more than 60 days; or reduction to the next inferior pay grade.

H.B. 1165 requires a person punished under these provisions who is authorized to appeal to the next superior authority through the proper channel to do so within 15 days after the punishment is either announced or sent to the accused, as the commander may determine. The bill removes the specification that the authority that is to act on an appeal is required to refer the case to a judge advocate or a legal officer of the Texas military forces, and instead authorizes the authority to refer the case to a judge advocate. The bill specifies that the imposition and enforcement of disciplinary punishment under these provisions for an act or omission is not a bar to trial by a civilian court for a serious crime or offense growing out of the same act or omission, in addition to not being a bar to a trial by court-martial. The bill transfers from the governor to the adjutant general the authority to prescribe by regulation the form of records to be kept of proceedings and the authority to require that certain categories of those proceedings be in writing.

H.B. 1165 removes a special court-martial consisting of not fewer than three members from the list of accepted special courts-martial established by law and requires that the Texas Army Guard and the Texas Air Guard have court-martial jurisdiction over all members subject to the Texas Code of Military Justice. The bill increases from \$1,000 to \$10,000 the maximum fine a general court-martial is authorized to adjudge and extends the period of confinement a general court-martial is authorized to adjudge from not more than 360 days to not more than five years and removes from the authorized punishments the reduction of a noncommissioned officer to the ranks. The bill increases from \$500 to \$4,000 the maximum fine a special court-martial is authorized to impose and extends from 180 days to one year the maximum period of confinement for a single offense. The bill increases from \$200 to \$1,000 the maximum fine a summary court-martial is authorized to sentence a person to pay and extends from 90 days to 180 days the maximum period of confinement for a single offense. The bill replaces a summary court-martial's authority to impose a reduction of a noncommissioned officer to the ranks with the authority to impose a reduction to any lower rank if the person subject to punishment is a noncommissioned officer.

H.B. 1165 includes any witness, in addition to a witness for the prosecution, among those prohibited during the course of the same case from also serving on or acting as military judge of a court-martial. The bill prohibits trial counsel and defense counsel for a general court-martial from being under the supervision or command of the other and authorizes the accused to expressly waive this prohibition. The bill prohibits the consideration or evaluation of the performance of duty of the member as a witness in a court-martial in determining a member's qualification for advancement in grade, assignment or transfer, or retainment. The bill requires the entire Texas Code of Military Justice, rather than certain provisions, to be carefully explained to every enlisted member as previously provided. The bill establishes that any punishment authorized under the Texas Code of Military Justice is measured in terms of calendar days. The bill defines "day," "duty," and "state military forces." The bill redefines "commanding officer," "officer," and "unit."

EFFECTIVE DATE

September 1, 2009.