

By: Flynn

H.B. No. 1165

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Code of Military Justice.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 432.001, Government Code, is amended by amending Subdivisions (3), (12), and (16) and adding Subdivisions (4-a) and (4-b) to read as follows:

(3) "Commanding officer" includes commissioned officers and warrant officers of the state military forces who either have been lawfully appointed to command by a superior authority or have lawfully assumed command [~~, as applicable~~].

(4-a) "Day" means calendar day and is not synonymous with "unit training assembly" or any other accounting for training.

(4-b) "Duty" means any presence or performance of any service with or on behalf of the state military forces.

(12) "Officer" means a commissioned or warrant officer of the state military forces.

(16) "State military forces" means the National Guard of this state, as defined in Title 32 [~~U.S.C. Sections 101(3)~~], United States Code [~~(4) and (6)~~], and other militia or military forces organized under the laws of this state.

SECTION 2. Section 432.002, Government Code, is amended to read as follows:

Sec. 432.002. PERSONS SUBJECT TO CHAPTER. This chapter applies to all members of the state military forces who are not in

1 federal service under Title 10, United States Code.

2 SECTION 3. Subchapter A, Chapter 432, Government Code, is
3 amended by adding Section 432.006 to read as follows:

4 Sec. 432.006. PUNISHMENT MEASURED IN DAYS. Any punishment
5 authorized under this chapter is measured in terms of calendar
6 days.

7 SECTION 4. Section 432.014, Government Code, is amended to
8 read as follows:

9 Sec. 432.014. RESTRAINT OF PERSONS CHARGED WITH OFFENSES.
10 A person subject to this chapter charged with an offense under this
11 chapter shall be ordered into arrest or confinement, as
12 circumstances may require, but if charged with only an offense
13 normally tried by a summary court-martial, the person may not
14 ordinarily be placed in confinement. If a person subject to this
15 chapter is placed in arrest or confinement before trial, immediate
16 steps shall be taken to inform him of the specific wrong of which he
17 is accused and to try him or to dismiss the charges and release him.
18 A person confined other than in a guardhouse, whether before,
19 during, or after trial by a military court, shall be confined in a
20 civilian [~~civil~~] jail.

21 SECTION 5. Section 432.021, Government Code, is amended to
22 read as follows:

23 Sec. 432.021. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT.
24 (a) Under regulations that the adjutant general [~~governor~~] may
25 prescribe, any commanding officer [~~limitations~~] may impose a
26 disciplinary [~~be placed on the powers granted by this section with~~
27 ~~respect to the kind and amount of~~] punishment for an offense without

1 the intervention of a court-martial under [~~authorized, the~~
2 ~~categories of commanding officers and warrant officers exercising~~
3 ~~command authorized to exercise those powers, the applicability of]~~
4 this section [~~to an accused who demands trial by court-martial, and~~
5 ~~the kinds of courts-martial to which the case may be referred on~~
6 ~~such a demand~~]. However, [~~except in the case of a member attached~~
7 ~~to or embarked in a vessel,~~] punishment may not be imposed on a
8 member of the state military forces under this section if the
9 member, before the imposition of the punishment, has demanded trial
10 by court-martial in lieu of [~~the~~] punishment under this section.
11 Only [~~Under similar regulations, rules may be prescribed with~~
12 ~~respect to the suspension of punishments authorized by this~~
13 ~~section. If authorized by regulations of]~~ the governor, the
14 adjutant general, [~~the governor~~] or an officer of a general or flag
15 rank in command may delegate the [~~governor's or officer's~~] powers
16 under this section to a principal assistant who is a member of the
17 state military forces.

18 (b) Any person facing discipline under this section [~~If~~
19 ~~disciplinary punishment other than admonition or reprimand is to be~~
20 ~~imposed, the accused~~] shall be afforded the opportunity to consult
21 with [~~be represented by~~] defense counsel having the qualifications
22 prescribed under Section 432.046(b), if such a counsel is
23 reasonably available. Otherwise, the accused shall be afforded the
24 opportunity to be represented by any available commissioned officer
25 of the accused's [~~his~~] choice. The accused may also be represented
26 by [~~employ~~] civilian counsel [~~of his own choosing~~] at no [~~his own~~]
27 expense to the state. In all proceedings, the accused is allowed

1 three duty days, or longer on written justification, to reply to the
2 notification of intent to impose punishment under this section.

3 (c) A [~~(b) Subject to Subsection (a), a~~] commanding
4 officer may [~~, in addition to or in lieu of admonition or~~
5 ~~reprimand,~~] impose on an enlisted member of the officer's [~~one or~~
6 ~~more of the following disciplinary punishments for minor offenses~~
7 ~~without the intervention of a court-martial:~~

8 ~~[(1) on officers of his] command:~~

9 (1) a reprimand;

10 (2) a fine of not more than two days' pay;

11 (3) [(A)] restriction to certain specified limits,
12 with or without suspension from duty, for not more than 60 [~~30~~]
13 days; or

14 (4) [(B) if imposed by the governor, or an officer of
15 general rank in command:

16 ~~[(i) arrest in quarters for not more than 30~~
17 ~~days,~~

18 ~~[(ii) forfeiture of not more than half of~~
19 ~~one month's pay a month for two months or a fine of not more than~~
20 ~~\$75,~~

21 ~~[(iii) restriction to certain specified~~
22 ~~limits, with or without suspension from duty, for not more than 60~~
23 ~~days, or~~

24 ~~[(iv) detention of not more than half of one~~
25 ~~month's pay a month for three months, and~~

26 ~~[(2) on other personnel of his command:~~

27 ~~[(A) if imposed on a person attached to or~~

1 ~~embarked in a vessel, confinement for not more than three days,~~
2 ~~[(B) correctional custody for not more than seven~~
3 ~~days,~~
4 ~~[(C) forfeiture of not more than seven days' pay~~
5 ~~or a fine of not more than \$50,~~
6 ~~[(D) reduction of not more than two pay grades,~~
7 ~~if imposed by a commanding officer of the grade of colonel or above,~~
8 ~~or reduction of not more than one pay grade, if imposed by a~~
9 ~~commanding officer of a grade lower than colonel,~~
10 ~~[(E) extra duties including fatigue or other~~
11 ~~duties, for not more than 30 days, which need not be consecutive,~~
12 ~~and for not more than two hours a day, holidays included,~~
13 ~~[(F) restriction to certain specified limits,~~
14 ~~with or without suspension from duty for not more than 14 days,~~
15 ~~[(G) detention of not more than 14 days' pay, or~~
16 ~~[(H) if imposed by an officer of the grade of~~
17 ~~major or above:~~
18 ~~[(i) the punishment authorized under~~
19 ~~Subsection (b)(2)(A),~~
20 ~~[(ii) correctional custody for not more~~
21 ~~than 30 days,~~
22 ~~[(iii) forfeiture of not more than half of~~
23 ~~one month's pay a month for two months or a fine of not more than~~
24 ~~\$100,~~
25 ~~[(iv)]~~ reduction to the next inferior
26 ~~[lowest or any intermediate]~~ pay grade for an enlisted member E-4 or
27 below.

1 (c-1) Any commanding officer of the grade of O-4 or above
2 may impose on an enlisted member of the officer's command:

3 (1) a reprimand;

4 (2) a fine of not more than three days' pay;

5 (3) restriction to certain specified limits, with or
6 without suspension from duty, for not more than 60 days; or

7 (4) reduction to the lowest or any intermediate pay
8 grade for an enlisted member E-4 or below, or reduction to the next
9 inferior pay grade for an enlisted member in a pay grade of E-5.

10 (c-2) Any commanding officer of the grade of O-6 or above
11 may impose on an enlisted member of the officer's command:

12 (1) a reprimand;

13 (2) a fine of not more than four days' pay;

14 (3) restriction to certain specified limits, with or
15 without suspension from duty, for not more than 60 days; or

16 (4) reduction to the lowest or any intermediate pay
17 grade for an enlisted member E-4 or below, or reduction of not more
18 than two pay grades for an enlisted member in a pay grade of E-5 or
19 E-6.

20 (c-3) The governor, the adjutant general, a component
21 commander, an officer exercising general court-martial convening
22 authority, or an officer of a general or flag rank in command may
23 impose on an enlisted member in a pay grade of E-7 of the officer's
24 command:

25 (1) a reprimand;

26 (2) a fine of not more than four days' pay;

27 (3) restriction to certain specified limits, with or

1 without suspension from duty, for not more than 60 days; or

2 (4) reduction of not more than two pay grades.

3 (c-4) The governor, the adjutant general, or a component
4 commander may impose:

5 (1) on an enlisted member in a pay grade of E-8 or E-9
6 of the officer's command:

7 (A) a reprimand;

8 (B) a fine of not more than four days' pay;

9 (C) restriction to certain specified limits,
10 with or without suspension from duty, for not more than 60 days; or

11 (D) reduction of not more than two pay grades; or

12 (2) on an officer of the officer's command:

13 (A) a reprimand;

14 (B) a fine of not more than four days' pay;

15 (C) restriction to certain specified limits,
16 with or without suspension from duty, for not more than 60 days; or

17 (D) reduction to the next inferior pay grade. [~~7~~

18 ~~if the grade from which demoted is within the promotion authority of~~
19 ~~the officer imposing the reduction or an officer subordinate to the~~
20 ~~one who imposes the reduction, but an enlisted member in a pay grade~~
21 ~~above E-4 may not be reduced more than two pay grades;~~

22 ~~[(v) extra duties, including fatigue or~~
23 ~~other duties, for not more than 45 days which need not be~~
24 ~~consecutive and for not more than two hours a day, holidays~~
25 ~~included;~~

26 ~~[(vi) restriction to certain specified~~
27 ~~limits with or without suspension from duty, for not more than 60~~

1 days; or

2 ~~[(vii) detention of not more than half of~~
3 ~~one month's pay a month for three months.~~

4 ~~[(c) Detention of pay shall be for a stated period of not~~
5 ~~more than one year, but if the offender's term of service expires~~
6 ~~earlier, the detention shall terminate on that expiration. No two~~
7 ~~or more of the punishments of arrest in quarters, correctional~~
8 ~~custody, extra duties, and restriction may be combined to run~~
9 ~~consecutively in the maximum amount imposable for each. If any of~~
10 ~~those punishments are combined to run consecutively, there must be~~
11 ~~an apportionment. In addition, fine or forfeiture of pay may not be~~
12 ~~combined with detention of pay without an apportionment. For the~~
13 ~~purposes of this section "correctional custody" means the physical~~
14 ~~restraint of a person during duty or nonduty hours and may include~~
15 ~~extra duties, fatigue duties, or hard labor. If practicable,~~
16 ~~correctional custody may not be required to be served in immediate~~
17 ~~association with persons awaiting trial or held in confinement~~
18 ~~pursuant to trial by courts-martial.~~

19 ~~[(d) An officer in charge may impose on enlisted members~~
20 ~~assigned to the unit of which he is in charge those of the~~
21 ~~punishments authorized under Subsections (b)(2)(A)-(C) that the~~
22 ~~governor specifically prescribes by regulation.]~~

23 (e) The officer who imposes the punishment [~~authorized in~~
24 ~~Subsection (b)] or the officer's [~~his~~] successor in command may at
25 any time suspend, set aside, mitigate, reduce, or remit
26 [~~probationally~~] any part or amount of the [~~unexecuted~~] punishment
27 [~~imposed and may suspend probationally a reduction in grade or fine~~~~

1 ~~or forfeiture imposed under Subsection (b), whether or not~~
2 ~~executed. In addition, the officer may, at any time, remit or~~
3 ~~mitigate any part or amount of the unexecuted punishment imposed~~
4 ~~and may set aside in whole or in part the punishment, whether~~
5 ~~executed or unexecuted,~~] and restore all rights, privileges, and
6 property affected. The [~~officer may also mitigate reduction in~~
7 ~~grade to fine or forfeiture or detention of pay. If mitigating~~
8 ~~arrest in quarters to restriction or extra duties to restriction,~~
9 ~~the~~] mitigated punishment may not be for a greater amount [~~period~~]
10 than the punishment mitigated. When [~~If mitigating forfeiture of~~
11 ~~pay to detention of pay, the amount of the detention may not be~~
12 ~~greater than the amount of the forfeiture. If~~] mitigating
13 reduction in grade to a fine, [~~forfeiture, or detention of pay,~~] the
14 amount of the fine [~~, forfeiture, or detention~~] may not be greater
15 than the amount that could have been imposed initially under this
16 section by the officer who imposed the punishment mitigated.

17 (f) A person punished under this section who considers the
18 punishment unjust or disproportionate to the offense may appeal to
19 the next superior authority through the proper channel within 15
20 days after the punishment is either announced or sent to the
21 accused, as the commander may determine. The appeal shall be
22 promptly forwarded and decided, but the person punished may in the
23 interim [~~meantime~~] be required to undergo the punishment adjudged.
24 The superior authority may exercise the same powers with respect to
25 the punishment imposed as may be exercised under Subsection (e) by
26 the officer who imposed the punishment. Before acting on an appeal
27 from a punishment [~~of arrest in quarters for more than seven days,~~

1 ~~correctional custody for more than seven days, forfeiture of more~~
2 ~~than seven days' pay, reduction of one or more pay grades from the~~
3 ~~fourth or a higher pay grade, extra duties for more than 14 days,~~
4 ~~restriction of more than 14 days' pay, or detention of more than 14~~
5 ~~days' pay], the authority that [~~who~~] is to act on the appeal may
6 [~~shall~~] refer the case to a judge advocate [~~or legal officer of the~~
7 ~~state military forces~~] for consideration and advice [~~, and may~~
8 ~~similarly refer the case on appeal from a punishment imposed under~~
9 ~~Subsection (b)]~~.~~

10 (g) The imposition and enforcement of disciplinary
11 punishment under this section for an act or omission is not a bar to
12 trial by court-martial or a civilian court for a serious crime or
13 offense growing out of the same act or omission and not properly
14 punishable under this section, but the fact that a disciplinary
15 punishment has been enforced may be shown by the accused on trial
16 and, when shown, shall be considered in determining the measure of
17 punishment to be adjudged in the event of a finding of guilty.

18 (h) The adjutant general [~~governor~~] by regulation may
19 prescribe the form of records to be kept of proceedings under this
20 section and may require that certain categories of those
21 proceedings be in writing.

22 [~~(i) A commanding officer may delegate authority to make a~~
23 ~~reduction in pay grade under Subsection (b)(2)(D) to the commanding~~
24 ~~officer's executive officer, chief of staff, or vice commander.]~~

25 SECTION 6. Section 432.031, Government Code, is amended to
26 read as follows:

27 Sec. 432.031. COURTS-MARTIAL CLASSIFIED. The three kinds

1 of courts-martial in each of the state military forces are:

2 (1) general court-martial, consisting of:

3 (A) a military judge and not fewer than five
4 members; or

5 (B) only a military judge, if before the court is
6 assembled the accused, knowing the identity of the military judge
7 and after consultation with defense counsel, requests in writing a
8 court composed only of a military judge and the military judge
9 approves;

10 (2) special court-martial, consisting of:

11 (A) ~~[not fewer than three members; or~~

12 ~~[(B)]~~ a military judge and not fewer than three
13 members; or

14 (B) ~~[(C)]~~ only a military judge, if one has been
15 detailed to the court, and the accused under the same conditions as
16 those prescribed in Subdivision (1)(B) requests; and

17 (3) summary court-martial, consisting of one officer,
18 who must be a military judge or an attorney licensed to practice law
19 in this state.

20 SECTION 7. Section 432.032, Government Code, is amended to
21 read as follows:

22 Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL.
23 Each force of the state military forces has court-martial
24 jurisdiction over all members of the force who are ~~[persons]~~
25 subject to this chapter. Additionally, the Texas Army Guard and the
26 Texas Air Guard shall have court-martial jurisdiction over all
27 members subject to this chapter. The exercise of jurisdiction by

1 one force over personnel of another force shall be in accordance
2 with regulations prescribed by the governor.

3 SECTION 8. Section 432.033(a), Government Code, is amended
4 to read as follows:

5 (a) Subject to Section 432.032, a general court-martial has
6 jurisdiction to try a person subject to this chapter for any offense
7 made punishable by this chapter and may, under limitations the
8 governor prescribes, adjudge any of the following punishments:

- 9 (1) a fine of not more than \$10,000;
- 10 (2) [\$1,000 ~~or~~] confinement for not more than five years
11 [~~360 days~~];
- 12 (3) [~~(2)~~] forfeiture of pay and allowances;
- 13 (4) [~~(3)~~] reprimand;
- 14 (5) [~~(4)~~] dismissal or dishonorable discharge;
- 15 [~~(5) reduction of a noncommissioned officer to the~~
16 ~~ranks,~~] or
- 17 (6) any combination of those punishments.

18 SECTION 9. Section 432.034(a), Government Code, is amended
19 to read as follows:

20 (a) Subject to Section 432.032, a special court-martial has
21 jurisdiction to try a person subject to this chapter, except a
22 commissioned officer, for any offense [~~for which he may be~~
23 ~~punished~~] under this chapter. A special court-martial has the same
24 powers of punishment as a general court-martial, except that a
25 special court-martial may not impose more than a \$4,000 [~~\$500~~] fine
26 and [~~or~~] confinement of more than one year [~~180 days~~] for a single
27 offense.

1 SECTION 10. Sections 432.035(a) and (c), Government Code,
2 are amended to read as follows:

3 (a) Subject to Section 432.032, a summary court-martial has
4 jurisdiction to try persons subject to this chapter, except
5 officers, for any offense under ~~[made punishable by]~~ this chapter.

6 (c) A summary court-martial may sentence a person to pay a
7 fine of not more than \$1,000, ~~[\$200 or]~~ confinement for not more
8 than 180 ~~[90]~~ days for a single offense, forfeit ~~[to forfeiture of]~~
9 pay and allowances, and a ~~[to]~~ reduction ~~[of a noncommissioned~~
10 ~~officer]~~ to any lower rank if the person is a noncommissioned
11 officer ~~[the ranks]~~.

12 SECTION 11. Section 432.042, Government Code, is amended to
13 read as follows:

14 Sec. 432.042. WHO MAY CONVENE SPECIAL COURT-MARTIAL. In
15 the state military forces not in federal service, any commander in
16 the grade of O-5 ~~[lieutenant colonel]~~ or ~~[in a]~~ higher ~~[grade]~~ may
17 convene a special court-martial.

18 SECTION 12. Section 432.043, Government Code, is amended to
19 read as follows:

20 Sec. 432.043. WHO MAY CONVENE SUMMARY COURT-MARTIAL. In
21 the state military forces not in federal service, any commander in
22 the grade of O-4 ~~[major]~~ or ~~[in a]~~ higher ~~[grade]~~ may convene a
23 summary court-martial.

24 SECTION 13. Sections 432.044(a), (c), and (d), Government
25 Code, are amended to read as follows:

26 (a) A state commissioned officer in a duty status is
27 eligible to serve on a court-martial ~~[for the trial of a person who~~

1 ~~may lawfully be brought before the court for trial].~~

2 (c) An enlisted member of the state military forces in a
3 duty status who is not a member of the same unit as the accused is
4 eligible to serve on general and special courts-martial for the
5 trial of an enlisted member of the state military forces who may
6 lawfully be brought before the court for trial if, before the
7 conclusion of a session called by the military judge under Section
8 432.064(a) before trial or, in the absence of such a session, before
9 the court is assembled for the trial of the accused, the accused
10 personally has requested in writing that enlisted members serve on
11 it. After such a request, the accused may not be tried by a general
12 or special court-martial the membership of which does not include
13 enlisted members in a number comprising at least one-third of the
14 total membership of the court, unless eligible members cannot be
15 obtained because of physical conditions or military exigencies. If
16 a sufficient number of enlisted members cannot be obtained, the
17 court may be convened and the trial held without them, but the
18 convening authority shall make a detailed written statement, to be
19 appended to the record, stating why they could not be obtained. In
20 this subsection, "unit" means a regularly organized body of the
21 state military forces not larger than a company, a squadron, a
22 division of the naval militia, or a body corresponding to one of
23 them.

24 (d) When [~~if~~] it can be avoided, a person subject to this
25 chapter may not be tried by a court-martial of which any [~~—a~~]
26 member [~~of which~~] is junior to the accused [~~him~~] in rank or grade.
27 On convening a court-martial, the convening authority shall detail

1 as members of the court-martial members of the state military
2 forces that, in the convening authority's [~~his~~] opinion, are best
3 qualified for the duty because of age, education, training,
4 experience, length of service, and judicial temperament. A member
5 of the state military forces is not eligible to serve as a member of
6 a general or special court-martial if the member is the accuser, is
7 [~~or~~] a witness, [~~for the prosecution~~] or has acted as investigating
8 officer or counsel in the same case.

9 SECTION 14. Section 432.045(d), Government Code, is amended
10 to read as follows:

11 (d) A person who is the accuser, is [~~or~~] a witness, [~~for the~~
12 ~~prosecution~~] or has acted as investigating officer or counsel in
13 the same [~~a~~] case is not eligible to act as military judge in the
14 case.

15 SECTION 15. Section 432.046, Government Code, is amended by
16 adding Subsection (b-1) to read as follows:

17 (b-1) Neither trial counsel nor defense counsel for a
18 general court-martial may be under the supervision or command of
19 the other. The accused may expressly waive the provisions of this
20 subsection.

21 SECTION 16. Section 432.048(d), Government Code, is amended
22 to read as follows:

23 (d) If the military judge of a court-martial composed of a
24 military judge only is unable to proceed with the trial because of
25 physical disability, as a result of a challenge, or for other good
26 cause, the trial shall proceed, subject to any applicable
27 conditions of Section 432.031(1)(B) or (2)(B) [~~(2)(C)~~], after the

1 detail of a new military judge as if no evidence had previously been
2 introduced, unless a verbatim record of the evidence previously
3 introduced or stipulation of that evidence is read in court in the
4 presence of the new military judge, the accused, and counsel for
5 both sides.

6 SECTION 17. Section 432.062(d), Government Code, is amended
7 to read as follows:

8 (d) In the preparation of an effectiveness, fitness, or
9 efficiency report, or another report or document used in whole or
10 part for determining whether a member of the state military forces
11 is qualified to be advanced in grade, in determining the assignment
12 or transfer of a member of the state military forces, or in
13 determining whether a member of the state military forces should be
14 retained on duty, a person subject to this chapter may not:

15 (1) consider or evaluate the performance of duty of
16 the member as a member of or witness in a court-martial; or

17 (2) give a less favorable rating or evaluation of a
18 member of the state military forces because of the zeal with which
19 the member, as counsel, represented an accused before a
20 court-martial.

21 SECTION 18. Section 432.183, Government Code, is amended to
22 read as follows:

23 Sec. 432.183. CHAPTER [SECTIONS] TO BE EXPLAINED. (a)
24 This chapter [Sections 432.002, 432.003, 432.011-432.017, 432.021,
25 432.044, 432.046, 432.052, 432.062, 432.063, 432.091,
26 432.121-432.167, and 432.183-432.185] shall be carefully explained
27 to every enlisted member at the time of or not later than the 30th

1 day after the date of the member's [~~his~~] enlistment, transfer, or
2 induction into, or the member's [~~his~~] order to duty in or with, any
3 of the state military forces. This chapter [~~They~~] shall also be
4 explained annually to each unit of the state military forces.

5 (b) A complete text of this chapter and of the regulations
6 prescribed by the governor under this chapter shall be made
7 available to any member of the state military forces, on [~~his~~]
8 request, for the member's [~~his~~] personal examination.

9 SECTION 19. Section 432.190(b), Government Code, is amended
10 to read as follows:

11 (b) A fine or forfeiture imposed by nonjudicial punishment
12 or a special or summary court-martial shall be paid to the officer
13 imposing nonjudicial punishment, the officer ordering the court, or
14 the officer commanding at that time. The officer, not later than
15 the fifth day after the date of the payment's receipt, shall place
16 it to the credit of the military unit fund of the unit of which the
17 person fined was a member when the fine was imposed.

18 SECTION 20. (a) The changes in law made by this Act apply
19 only to an offense committed on or after the effective date of this
20 Act. For purposes of this section, an offense is committed before
21 the effective date of this Act if any element of the offense occurs
22 before that date.

23 (b) An offense committed before the effective date of this
24 Act is covered by the law in effect when the offense was committed,
25 and the former law is continued in effect for that purpose.

26 SECTION 21. This Act takes effect September 1, 2009.