

By: Rodriguez

S.B. No. 1766

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 to read as follows:

Sec. 432.001. DEFINITIONS. In this chapter:

(1) "Accuser" means a person who signs and swears to charges, who directs that charges nominally be signed and sworn to by another, or who has an interest other than an official interest in the prosecution of the accused.

(2) "Active state duty" means duty authorized under the constitution and laws of the state and all training authorized under Title 32, United States Code.

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

(4) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding temporarily, or a successor in command.

(5) "Day" means a calendar day and is not synonymous with unit training assembly or any other accounting for training. A punishment authorized under this chapter that is measured in terms of days means calendar days.

1           (6) "Duty" means any presence or performance of any  
2 service with or on behalf of the state military forces.

3           (7) "Enlisted member" means a person in an enlisted  
4 grade.

5           (8) [~~(6)~~] "Grade" means a step or degree, in a  
6 graduated scale of office or military rank, that is established and  
7 designated as a grade by law or regulation.

8           (9) [~~(7)~~] "Judge advocate" means a commissioned  
9 officer appointed to serve as a judge advocate by the adjutant  
10 general under Section 432.005(b).

11           (10) [~~(8)~~] "Legal officer" means a commissioned  
12 officer of the state military forces designated to perform legal  
13 duties for a command.

14           (11) [~~(9)~~] "Military" refers to all or part of the  
15 state military forces.

16           (12) [~~(10)~~] "Military court" means a court-martial,  
17 court of inquiry, military commission, or provost court.

18           (13) [~~(11)~~] "Military judge" means an official of a  
19 court-martial detailed in accordance with Section 432.045.

20           (14) [~~(12)~~] "Officer" means a commissioned or warrant  
21 officer of the state military forces.

22           (15) [~~(13)~~] "Officer candidate" means a candidate  
23 [~~cadet~~] of the state officer candidate school.

24           (16) [~~(14)~~] "Rank" means the order of precedence among  
25 members of the state military forces.

26           (17) [~~(15)~~] "State judge advocate general" means the  
27 judge advocate general of the state military forces, commissioned

1 in those forces, and responsible for supervising the administration  
2 of military justice in the state military forces, and performing  
3 other legal duties required by the adjutant general.

4           (18) [~~(16)~~] "State military forces" means the  
5 National Guard of this state, as defined in Title 32, United States  
6 Code [~~32 U.S.C. Sections 101(3), (4) and (6)~~], and other militia or  
7 military forces organized under the laws of this state.

8           (19) [~~(17)~~] "Superior commissioned officer" means a  
9 commissioned officer superior in rank or command.

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

12           Sec. 432.002. PERSONS SUBJECT TO CHAPTER. This chapter  
13 applies to all members of the state military forces who are not in  
14 federal service under Title 10, United States Code.

15           SECTION 3. Subchapters B and C, Chapter 432, Government  
16 Code, are amended to read as follows:

17           SUBCHAPTER B. APPREHENSION AND RESTRAINT; NONJUDICIAL PUNISHMENT

18           Sec. 432.008 [~~432.011~~]. APPREHENSION. (a) In this  
19 subchapter, "apprehend" means to take a person into custody.

20           (b) A person authorized by this chapter or by regulations  
21 issued under it to apprehend a person subject to this chapter, a  
22 marshal of a court-martial appointed under this chapter, and a  
23 peace officer having authority to apprehend offenders under the  
24 laws of the United States or of a state, may do so on reasonable  
25 belief that an offense has been committed and that the person  
26 apprehended committed it.

27           (c) Commissioned officers, warrant officers, and

1 noncommissioned officers may quell quarrels, frays, and disorders  
2 among persons subject to this chapter and apprehend persons subject  
3 to this chapter who take part in those activities.

4       Sec. 432.009 [~~432.012~~]. APPREHENSION OF DESERTERS. A civil  
5 officer or peace officer having authority to apprehend offenders  
6 under the laws of the United States or a state, territory,  
7 commonwealth, or possession, or the District of Columbia, may  
8 summarily apprehend a deserter from the state military forces and  
9 deliver the deserter into the custody of the state military forces.

10       Sec. 432.010 [~~432.013~~]. IMPOSITION OF RESTRAINT. (a) In  
11 this subchapter:

12               (1) "Arrest" means the restraint of a person by an  
13 order, not imposed as a punishment for an offense, directing the  
14 person to remain within certain specified limits.

15               (2) "Confinement" means the physical restraint of a  
16 person.

17       (b) An enlisted member may be ordered into arrest or  
18 confinement by a commissioned officer by an oral or written order  
19 delivered in person, through other persons subject to this chapter,  
20 or through a person authorized by this chapter to apprehend  
21 persons. A commanding officer may authorize warrant officers or  
22 noncommissioned officers to order enlisted members of the officer's  
23 [~~his~~] company or subject to the officer's [~~his~~] authority into  
24 arrest or confinement.

25       (c) A commissioned officer or warrant officer may be ordered  
26 apprehended or into arrest or confinement only by a commanding  
27 officer to whose authority the person [~~he~~] is subject, by an oral or

1 written order delivered in person or by another commissioned  
2 officer. The authority to order such persons apprehended or into  
3 arrest or confinement may not be delegated.

4 (d) A person may not be ordered apprehended or into arrest  
5 or confinement except for probable cause.

6 (e) This section does not limit the authority of persons  
7 authorized to apprehend offenders to secure the custody of an  
8 alleged offender until the proper authority may be notified.

9 Sec. 432.011 [~~432.014~~]. RESTRAINT OF PERSONS CHARGED WITH  
10 OFFENSES. A person subject to this chapter charged with an offense  
11 under this 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 the person [~~him~~] of the specific  
17 wrong of which the person [~~he~~] is accused and to try the person  
18 [~~him~~] or to dismiss the charges and release the person [~~him~~]. A  
19 person confined other than in a guardhouse, whether before, during,  
20 or after trial by a military court, shall be confined in a civilian  
21 [~~civil~~] jail.

22 Sec. 432.012 [~~432.015~~]. REPORTS AND RECEIVING OF  
23 PRISONERS. (a) A provost marshal, commander of a guard, master at  
24 arms, warden, keeper, or officer of a city or county jail or any  
25 other jail designated under Section 432.011 [~~432.014~~] may not  
26 refuse to receive or keep a prisoner committed to the person's [~~his~~]  
27 charge, when the committing person furnishes a statement, signed by

1 the committing person [~~him~~], of the offense charged against the  
2 prisoner.

3 (b) A commander of a guard, master at arms, warden, keeper,  
4 or officer of a city or county jail or of any other jail designated  
5 under Section 432.011 [~~432.014~~] to whose charge a prisoner is  
6 committed shall, within 24 hours after that commitment or as soon as  
7 the person [~~he~~] is relieved from guard, report to the commanding  
8 officer of the prisoner the name of the prisoner, the offense  
9 charged against the prisoner [~~him~~], and the name of the person who  
10 ordered or authorized the commitment.

11 Sec. 432.013 [~~432.016~~]. PUNISHMENT PROHIBITED BEFORE  
12 TRIAL. Subject to Section 432.093, a person, while being held for  
13 trial or the result of trial, may not be subjected to punishment or  
14 penalty other than arrest or confinement on the charges pending  
15 against the person, nor may the arrest or confinement imposed on the  
16 person be more rigorous than the circumstances require to ensure  
17 the person's presence, but the person may be subjected to minor  
18 punishment during that period for infractions of discipline.

19 Sec. 432.014 [~~432.017~~]. DELIVERY OF OFFENDERS TO CIVIL  
20 AUTHORITIES. (a) Under regulations prescribed under this chapter  
21 a person subject to this chapter who is on active state duty and who  
22 is accused of an offense against civil authority may be delivered,  
23 on request, to the civil authority for trial.

24 (b) If delivery under this section is made to a civil  
25 authority of a person undergoing sentence of a court-martial, the  
26 delivery, if followed by conviction in a civil tribunal, interrupts  
27 the execution of the sentence of the court-martial, and the

1 offender, after having answered to the civil authorities for the  
2 offense, on the request of competent military authority, shall be  
3 returned to military custody for the completion of the sentence.

4 ~~[SUBCHAPTER C. NONJUDICIAL PUNISHMENT]~~

5 Sec. 432.015 ~~[432.021]~~. COMMANDING OFFICER'S NONJUDICIAL  
6 PUNISHMENT. (a) Under regulations as ~~[that the governor]~~ may be  
7 prescribed, any commanding officer may impose disciplinary  
8 punishments for minor offenses without the intervention of a  
9 court-martial in accordance with this subchapter. There is no  
10 right to trial by court-martial in lieu of nonjudicial punishment  
11 imposed under this section. Only the governor, the adjutant  
12 general, or an officer of a general or flag rank in command may  
13 delegate the powers under this section to a principal assistant who  
14 is a member of the state military forces.

15 (b) Any accused person who is facing discipline under this  
16 section ~~[prescribe, limitations may be placed on the powers granted~~  
17 ~~by this section with respect to the kind and amount of punishment~~  
18 ~~authorized, the categories of commanding officers and warrant~~  
19 ~~officers exercising command authorized to exercise those powers,~~  
20 ~~the applicability of this section to an accused who demands trial by~~  
21 ~~court-martial, and the kinds of courts-martial to which the case~~  
22 ~~may be referred on such a demand. However, except in the case of a~~  
23 ~~member attached to or embarked in a vessel, punishment may not be~~  
24 ~~imposed on a member of the state military forces under this section~~  
25 ~~if the member, before the imposition of the punishment, has~~  
26 ~~demanded trial by court-martial in lieu of the punishment. Under~~  
27 ~~similar regulations, rules may be prescribed with respect to the~~

1 ~~suspension of punishments authorized by this section. If~~  
 2 ~~authorized by regulations of the governor, the governor or an~~  
 3 ~~officer of general rank in command may delegate the governor's or~~  
 4 ~~officer's powers under this section to a principal assistant. If~~  
 5 ~~disciplinary punishment other than admonition or reprimand is to be~~  
 6 ~~imposed, the accused]~~ shall be afforded the opportunity to be  
 7 represented by defense counsel having the qualifications  
 8 prescribed under Section 432.046(b), if such a counsel is  
 9 reasonably available. Otherwise, the accused shall be afforded the  
 10 opportunity to be represented by any available commissioned officer  
 11 of the accused's [~~his~~] choice. The accused may also be represented  
 12 by [~~employ~~] civilian counsel [~~of his own choosing~~] at no [~~his own~~]  
 13 expense to the state. In all proceedings, the accused is allowed  
 14 three duty days, or longer on written justification, to reply to the  
 15 notification of intent to impose punishment under this section.

16 (c) Any [~~(b) Subject to Subsection (a), a~~] commanding  
 17 officer may[, ~~in addition to or in lieu of admonition or reprimand,~~]  
 18 impose on enlisted members in the officer's [~~one or more of the~~  
 19 ~~following disciplinary punishments for minor offenses without the~~  
 20 ~~intervention of a court-martial:~~

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

22 (1) a reprimand;

23 (2) [(A) restriction to certain specified limits  
 24 with or without suspension from duty, for not more than 30 days, or

25 ~~[(B) if imposed by the governor, or an officer of~~  
 26 ~~general rank in command:~~

27 ~~[(i) arrest in quarters for not more than 30~~

1 ~~days;~~

2 ~~[(ii) forfeiture of not more than half of~~  
3 ~~one month's pay a month for two months or] a fine equal to an amount~~  
4 ~~that is [of] not more than seven days' pay [\$75]; and~~

5 (3) a reduction to the next inferior pay grade.

6 (d) Any ~~[(iii) restriction to certain specified limits,~~  
7 ~~with or without suspension from duty, for not more than 60 days; or~~

8 ~~[(iv) detention of not more than half of one~~  
9 ~~month's pay a month for three months; and~~

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

11 ~~[(A) if imposed on a person attached to or~~  
12 ~~embarked in a vessel, confinement for not more than three days;~~

13 ~~[(B) correctional custody for not more than seven~~  
14 ~~days;~~

15 ~~[(C) forfeiture of not more than seven days' pay~~  
16 ~~or a fine of not more than \$50;~~

17 ~~[(D) reduction of not more than two pay grades,~~  
18 ~~if imposed by a] commanding officer of the grade of O-4 [~~colonel~~] or~~  
19 ~~above may impose on enlisted members in the officer's command:~~

20 (1) a reprimand;

21 (2) [ ~~, or reduction of not more than one pay grade, if~~  
22 ~~imposed by a commanding officer of a grade lower than colonel;~~

23 ~~[(E) extra duties including fatigue or other~~  
24 ~~duties, for not more than 30 days, which need not be consecutive,~~  
25 ~~and for not more than two hours a day, holidays included;~~

26 ~~[(F) restriction to certain specified limits,~~  
27 ~~with or without suspension from duty for not more than 14 days;~~

1                   ~~[(C) detention of not more than 14 days' pay; or~~  
2                   ~~[(H) if imposed by an officer of the grade of~~  
3 ~~major or above:~~  
4                   ~~[(i) the punishment authorized under~~  
5 ~~Subsection (b)(2)(A);~~  
6                   ~~[(ii) correctional custody for not more~~  
7 ~~than 30 days;~~  
8                   ~~[(iii) forfeiture of not more than half of~~  
9 ~~one month's pay a month for two months or]~~ a fine equal to an amount  
10 that is ~~[of]~~ not more than one month's pay ~~[\$100]; and~~  
11                   (3) a ~~[(iv)]~~ reduction to the lowest or any  
12 intermediate pay grade, ~~[if the grade from which demoted is within~~  
13 ~~the promotion authority of the officer imposing the reduction or an~~  
14 ~~officer subordinate to the one who imposes the reduction,]~~ but an  
15 enlisted member in a pay grade above E-4 may not be reduced more  
16 than two pay grades~~;~~  
17                   ~~[(v) extra duties, including fatigue or~~  
18 ~~other duties, for not more than 45 days which need not be~~  
19 ~~consecutive and for not more than two hours a day, holidays~~  
20 ~~included;~~  
21                   ~~[(vi) restriction to certain specified~~  
22 ~~limits with or without suspension from duty, for not more than 60~~  
23 ~~days; or~~  
24                   ~~[(vii) detention of not more than half of~~  
25 ~~one month's pay a month for three months.~~  
26                   ~~[(c) Detention of pay shall be for a stated period of not~~  
27 ~~more than one year, but if the offender's term of service expires~~

1 ~~earlier, the detention shall terminate on that expiration. No two~~  
2 ~~or more of the punishments of arrest in quarters, correctional~~  
3 ~~custody, extra duties, and restriction may be combined to run~~  
4 ~~consecutively in the maximum amount imposable for each. If any of~~  
5 ~~those punishments are combined to run consecutively, there must be~~  
6 ~~an apportionment. In addition, fine or forfeiture of pay may not be~~  
7 ~~combined with detention of pay without an apportionment. For the~~  
8 ~~purposes of this section "correctional custody" means the physical~~  
9 ~~restraint of a person during duty or nonduty hours and may include~~  
10 ~~extra duties, fatigue duties, or hard labor. If practicable,~~  
11 ~~correctional custody may not be required to be served in immediate~~  
12 ~~association with persons awaiting trial or held in confinement~~  
13 ~~pursuant to trial by courts-martial.~~

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

18 (e) The governor, the adjutant general, an officer  
19 exercising general court-martial convening authority, or an  
20 officer of a general or flag rank in command may impose:

21 (1) on officers in the officer's command:

22 (A) a reprimand; and

23 (B) a fine equal to an amount that is not more  
24 than one month's pay; and

25 (2) on enlisted members in the officer's command, any  
26 punishment authorized under Subsection (d).

27 (f) The officer who imposes the punishment authorized in

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

21 (g) [~~(f)~~] A person punished under this section who  
 22 considers the punishment unjust or disproportionate to the offense  
 23 may, through the proper channel, appeal to the next superior  
 24 authority not later than the 15th day after the date the punishment  
 25 is either announced or sent to the accused, as the commanding  
 26 officer determines [~~through the proper channel~~]. The appeal shall  
 27 be promptly forwarded and decided, but the person punished may in

1 the meantime be required to undergo the punishment adjudged. The  
2 superior authority may exercise the same powers with respect to the  
3 punishment imposed as may be exercised under Subsection (f) [~~(e)~~]  
4 by the officer who imposed the punishment. Before acting on an  
5 appeal from a punishment [~~of arrest in quarters for more than seven~~  
6 ~~days, correctional custody for more than seven days, forfeiture of~~  
7 ~~more than seven days' pay, reduction of one or more pay grades from~~  
8 ~~the fourth or a higher pay grade, extra duties for more than 14~~  
9 ~~days, restriction of more than 14 days' pay, or detention of more~~  
10 ~~than 14 days' pay]~~, the authority who is to act on the appeal may  
11 [~~shall~~] refer the case to a judge advocate [~~or legal officer of the~~  
12 ~~state military forces]~~ for consideration and advice[, ~~and may~~  
13 ~~similarly refer the case on appeal from a punishment imposed under~~  
14 ~~Subsection (b)~~].

15 (h) [~~(g)~~] The imposition and enforcement of disciplinary  
16 punishment under this section for any [~~an~~] act or omission is not a  
17 bar to trial by court-martial or a civilian court of competent  
18 jurisdiction for a serious crime or offense growing out of the same  
19 act or omission and not properly punishable under this section, but  
20 the fact that a disciplinary punishment has been enforced may be  
21 shown by the accused on trial and, when shown, shall be considered  
22 in determining the measure of punishment to be adjudged in the event  
23 of a finding of guilty.

24 (i) Regulations [~~(h) The governor by regulation~~] may  
25 prescribe the form of records to be kept of proceedings under this  
26 section and [~~may require~~] that certain categories of those  
27 proceedings shall be in writing.

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

4           SECTION 4. Section 432.031, Government Code, is amended to  
5 read as follows:

6           Sec. 432.031. COURTS-MARTIAL CLASSIFIED. The three kinds  
7 of courts-martial in each of the state military forces are:

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

9                   (A) a military judge and not fewer than five  
10 members; or

11                   (B) only a military judge, if before the court is  
12 assembled the accused, knowing the identity of the military judge  
13 and after consultation with defense counsel, requests in writing a  
14 court composed only of a military judge and the military judge  
15 approves;

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

17                   (A) ~~[not fewer than three members; or~~  
18                   ~~[(B)]~~ a military judge and not fewer than three  
19 members; or

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

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

26           SECTION 5. Section 432.032, Government Code, is amended to  
27 read as follows:

1           Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL.  
2 Each force of the state military forces has court-martial  
3 jurisdiction over a member of the force who is subject to this  
4 chapter. The Texas Army National Guard and the Texas Air National  
5 Guard have court-martial jurisdiction over all enlisted members  
6 ~~[all persons]~~ subject to this chapter. The exercise of  
7 jurisdiction by one force over personnel of another force shall be  
8 in accordance with regulations prescribed by the governor.

9           SECTION 6. Subsection (a), Section 432.033, Government  
10 Code, is amended to read as follows:

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

- 15                   (1) reprimand;  
16                   (2) forfeiture of pay and allowances;  
17                   (3) a fine of not more than \$10,000;  
18                   (4) reduction of any enlisted member to any lower  
19 rank;  
20                   (5) [\$1,000 or] confinement for not more than five  
21 years;  
22                   (6) [360 days,  
23 ~~[(2) forfeiture of pay and allowances,  
24 ~~[(3) reprimand,  
25 ~~[(4)] dismissal or bad conduct or dishonorable~~  
26 ~~discharge[+]~~  
27                   ~~[(5) reduction of a noncommissioned officer to the~~~~~~

1 ~~ranks~~]; or

2           (7) [~~(6)~~] any combination of those punishments.

3           SECTION 7. Section 432.034, Government Code, is amended to  
4 read as follows:

5           Sec. 432.034. JURISDICTION OF SPECIAL COURT-MARTIAL.

6 (a) Subject to Section 432.032, a special court-martial has  
7 jurisdiction to try a person subject to this chapter, except a  
8 commissioned officer, for any offense [~~for which he may be~~  
9 ~~punished~~] under this chapter. A special court-martial has the same  
10 powers of punishment as a general court-martial, except that a  
11 special court-martial may not impose more than a \$4,000 [~~\$500~~] fine  
12 and [~~or~~] confinement of not more than one year [~~180 days~~] for a  
13 single offense.

14           (b) A dismissal or bad conduct [~~dishonorable~~] discharge may  
15 not be adjudged unless a complete record of the proceedings and  
16 testimony is made, counsel having the qualifications prescribed  
17 under Section 432.046(b) is detailed to represent the accused, and  
18 a military judge is detailed to the trial, except in a case in which  
19 a military judge cannot be detailed to the trial because of physical  
20 conditions or military exigencies. In a case in which a military  
21 judge is not detailed to the trial, the convening authority shall  
22 make a detailed written statement, to be appended to the record,  
23 stating the reason a military judge could not be detailed.

24           SECTION 8. Subsections (a) and (c), Section 432.035,  
25 Government Code, are amended to read as follows:

26           (a) Subject to Section 432.032, a summary court-martial has  
27 jurisdiction to try persons subject to this chapter, except

1 officers, for any offense under [~~made punishable by~~] this chapter.

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

7 SECTION 9. Section 432.042, Government Code, is amended to  
8 read as follows:

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

13 SECTION 10. Section 432.043, Government Code, is amended to  
14 read as follows:

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

19 SECTION 11. Subsections (a), (c), and (d), Section 432.044,  
20 Government Code, are amended to read as follows:

21 (a) Any [~~A~~] state commissioned officer in a duty status is  
22 eligible to serve on a court-martial [~~for the trial of a person who~~  
23 ~~may lawfully be brought before the court for trial~~].

24 (c) An enlisted member of the state military forces in a  
25 duty status who is not a member of the same unit as the accused is  
26 eligible to serve on general and special courts-martial for the  
27 trial of an enlisted member of the state military forces who may

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

19 (d) When [~~If~~] it can be avoided, a person subject to this  
20 chapter may not be tried by a court-martial[~~, a member~~] of which any  
21 member is junior to the accused [~~him~~] in rank or grade. On  
22 convening a court-martial, the convening authority shall detail as  
23 members of the court-martial members of the state military forces  
24 that, in the convening authority's [~~his~~] opinion, are best  
25 qualified for the duty because of age, education, training,  
26 experience, length of service, and judicial temperament. A member  
27 of the state military forces is not eligible to serve as a member of

1 a general or special court-martial if the member is the accuser, is  
2 [~~or~~] a witness, [for the prosecution] or has acted as investigating  
3 officer or counsel in the same case.

4 SECTION 12. Subsection (d), Section 432.045, Government  
5 Code, is amended to read as follows:

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

9 SECTION 13. Section 432.046, Government Code, is amended by  
10 adding Subsection (b-1) to read as follows:

11 (b-1) Trial counsel or defense counsel detailed for a  
12 general court-martial may not be under the supervision or command  
13 of the other counsel unless the accused and the prosecution  
14 expressly waive this restriction.

15 SECTION 14. Subsection (d), Section 432.062, Government  
16 Code, is amended to read as follows:

17 (d) In the preparation of an effectiveness, fitness, or  
18 efficiency report, or another report or document used in whole or  
19 part for determining whether a member of the state military forces  
20 is qualified to be advanced in grade, in determining the assignment  
21 or transfer of a member of the state military forces, or in  
22 determining whether a member of the state military forces should be  
23 retained on duty, a person subject to this chapter may not:

24 (1) consider or evaluate the performance of duty of  
25 the member as a member of a court-martial or a witness in a  
26 court-martial; or

27 (2) give a less favorable rating or evaluation of a

1 member of the state military forces because of the zeal with which  
2 the member, as counsel, represented an accused before a  
3 court-martial.

4 SECTION 15. Subchapter J, Chapter 432, Government Code, is  
5 amended by adding Section 432.1225 to read as follows:

6 Sec. 432.1225. PENAL CODE OFFENSES. A person subject to  
7 this chapter who commits an offense under the Penal Code is  
8 considered to violate this chapter and is subject to punishment  
9 under this chapter.

10 SECTION 16. Section 432.183, Government Code, is amended to  
11 read as follows:

12 Sec. 432.183. CHAPTER [SECTIONS] TO BE EXPLAINED. This  
13 chapter [Sections 432.002, 432.003, 432.011-432.017, 432.021,  
14 432.044, 432.046, 432.052, 432.062, 432.063, 432.091,  
15 432.121-432.167, and 432.183-432.185] shall be carefully explained  
16 to every enlisted member at the time of or not later than the 30th  
17 day after the date of the member's [his] enlistment, transfer, or  
18 induction into, or the member's [his] order to duty in or with, any  
19 of the state military forces. It [They] shall also be explained  
20 annually to each unit of the state military forces. A complete text  
21 of this chapter and of the regulations prescribed by the governor  
22 under this chapter shall be made available to any member of the  
23 state military forces, on the member's [his] request, for the  
24 member's [his] personal examination.

25 SECTION 17. Subsection (b), Section 432.190, Government  
26 Code, is amended to read as follows:

27 (b) A fine or forfeiture imposed by nonjudicial punishment

1 or a special or summary court-martial shall be paid to the officer  
2 imposing nonjudicial punishment or ordering the court or to the  
3 officer commanding at that time. The officer, not later than the  
4 fifth day after the date of the payment's receipt, shall place it to  
5 the credit of the military unit fund of the unit of which the person  
6 fined was a member when the fine was imposed.

7         SECTION 18. The change in law made by this Act applies only  
8 to an offense committed on or after the effective date of this Act.  
9 For purposes of this section, an offense is committed before the  
10 effective date of this Act if any element of the offense occurs  
11 before the effective date. An offense committed before the  
12 effective date of this Act is covered by the law in effect when the  
13 offense was committed, and the former law is continued in effect for  
14 that purpose.

15         SECTION 19. This Act takes effect September 1, 2011.