

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 by amending Subdivisions (3), (12), (13), 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 appointed to command by a superior authority or have lawfully assumed command~~[, as applicable]~~.

(4-a) "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.

(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.

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

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

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

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

6 SECTION 3. Section 432.014, Government Code, is amended to  
7 read as follows:

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

21 SECTION 4. 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 as [~~that the governor~~] may be prescribed, any  
25 commanding officer may impose disciplinary punishments for minor  
26 offenses without the intervention of a court-martial in accordance  
27 with this subchapter. There is no right to trial by court-martial

1 in lieu of nonjudicial punishment imposed under this section. Only  
2 the governor, the adjutant general, or an officer of a general or  
3 flag rank in command may delegate the powers under this section to a  
4 principal assistant who is a member of the state military forces.

5 (b) Any accused person who is facing discipline under this  
6 section [prescribe, limitations may be placed on the powers granted  
7 by this section with respect to the kind and amount of punishment  
8 authorized, the categories of commanding officers and warrant  
9 officers exercising command authorized to exercise those powers,  
10 the applicability of this section to an accused who demands trial by  
11 court-martial, and the kinds of courts-martial to which the case  
12 may be referred on such a demand. However, except in the case of a  
13 member attached to or embarked in a vessel, punishment may not be  
14 imposed on a member of the state military forces under this section  
15 if the member, before the imposition of the punishment, has  
16 demanding trial by court-martial in lieu of the punishment. Under  
17 similar regulations, rules may be prescribed with respect to the  
18 suspension of punishments authorized by this section. If  
19 authorized by regulations of the governor, the governor or an  
20 officer of general rank in command may delegate the governor's or  
21 officer's powers under this section to a principal assistant. If  
22 disciplinary punishment other than admonition or reprimand is to be  
23 imposed, the accused] shall be afforded the opportunity to be  
24 represented by defense counsel having the qualifications  
25 prescribed under Section 432.046(b), if such a counsel is  
26 reasonably available. Otherwise, the accused shall be afforded the  
27 opportunity to be represented by any available commissioned officer

1 of the accused's [~~his~~] choice. The accused may also be represented  
2 by [~~employ~~] civilian counsel [~~of his own choosing~~] at no [~~his own~~]  
3 expense to the state. In all proceedings, the accused is allowed  
4 three duty days, or longer on written justification, to reply to the  
5 notification of intent to impose punishment under this section.

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

11 [(1) on officers of his] command:

12 (1) a reprimand;

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

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

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

19 [(ii) forfeiture of not more than half of  
20 one month's pay a month for two months or] a fine equal to an amount

21 that is [~~of~~] not more than seven days' pay [~~\$75~~]; and  
22 (3) a reduction to the next inferior pay grade.

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

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

27 [(2) on other personnel of his command:

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

3                   ~~[(B) correctional custody for not more than seven~~  
4 ~~days,~~

5                   ~~[(C) forfeiture of not more than seven days' pay~~  
6 ~~or a fine of not more than \$50,~~

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

10                   (1) a reprimand;

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

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

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

18                   ~~[(G) detention of not more than 14 days' pay; or~~

19                   ~~[(H) if imposed by an officer of the grade of~~  
20 ~~major or above:~~

21                   ~~[(i) the punishment authorized under~~  
22 ~~Subsection (b)(2)(A),~~

23                   ~~[(ii) correctional custody for not more~~  
24 ~~than 30 days,~~

25                   ~~[(iii) forfeiture of not more than half of~~  
26 ~~one month's pay a month for two months or] a fine equal to an amount~~  
27 ~~that is [~~of~~] not more than one month's pay [~~\$100~~]; and~~

1           (3) a [~~(iv)~~] reduction to the lowest or any  
2 intermediate pay grade, [~~if the grade from which demoted is within~~  
3 ~~the promotion authority of the officer imposing the reduction or an~~  
4 ~~officer subordinate to the one who imposes the reduction,~~] but an  
5 enlisted member in a pay grade above E-4 may not be reduced more  
6 than two pay grades[~~+~~

7                           ~~[(v) extra duties, including fatigue or~~  
8 ~~other duties, for not more than 45 days which need not be~~  
9 ~~consecutive and for not more than two hours a day, holidays~~  
10 ~~included;~~

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

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

16           ~~[(c) Detention of pay shall be for a stated period of not~~  
17 ~~more than one year, but if the offender's term of service expires~~  
18 ~~earlier, the detention shall terminate on that expiration. No two~~  
19 ~~or more of the punishments of arrest in quarters, correctional~~  
20 ~~custody, extra duties, and restriction may be combined to run~~  
21 ~~consecutively in the maximum amount imposable for each. If any of~~  
22 ~~those punishments are combined to run consecutively, there must be~~  
23 ~~an apportionment. In addition, fine or forfeiture of pay may not be~~  
24 ~~combined with detention of pay without an apportionment. For the~~  
25 ~~purposes of this section "correctional custody" means the physical~~  
26 ~~restraint of a person during duty or nonduty hours and may include~~  
27 ~~extra duties, fatigue duties, or hard labor. If practicable,~~

1 ~~correctional custody may not be required to be served in immediate~~  
2 ~~association with persons awaiting trial or held in confinement~~  
3 ~~pursuant to trial by courts-martial.~~

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

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

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

12 (A) a reprimand; and

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

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

17 (f) The officer who imposes the punishment authorized in  
18 this section [Subsection (b)] or the officer's [his] successor in  
19 command may at any time suspend, set aside, reduce, or remit  
20 [probationally] any part or amount of the [unexecuted] punishment  
21 [imposed and may suspend probationally a reduction in grade or fine  
22 or forfeiture imposed under Subsection (b), whether or not  
23 executed. In addition, the officer may, at any time, remit or  
24 mitigate any part or amount of the unexecuted punishment imposed  
25 and may set aside in whole or in part the punishment, whether  
26 executed or unexecuted,] and restore all rights, privileges, and  
27 property affected. The [officer may also mitigate reduction in

1 ~~grade to fine or forfeiture or detention of pay. If mitigating~~  
2 ~~arrest in quarters to restriction or extra duties to restriction,~~  
3 ~~the] mitigated punishment may not be for a greater amount [~~period~~]~~  
4 ~~than the punishment mitigated. When [~~If mitigating forfeiture of~~~~  
5 ~~pay to detention of pay, the amount of the detention may not be~~  
6 ~~greater than the amount of the forfeiture. If] mitigating~~  
7 ~~reduction in grade to a fine, [~~forfeiture, or detention of pay,~~]~~  
8 ~~amount of the fine[, ~~forfeiture, or detention~~]~~ may not be greater  
9 than the amount that could have been imposed initially under this  
10 section by the officer who imposed the punishment mitigated.

11 (g) [~~(f)~~] A person punished under this section who  
12 considers the punishment unjust or disproportionate to the offense  
13 may, through the proper channel, appeal to the next superior  
14 authority not later than the 15th day after the date the punishment  
15 is either announced or sent to the accused, as the commanding  
16 officer determines [~~through the proper channel~~]. The appeal shall  
17 be promptly forwarded and decided, but the person punished may in  
18 the meantime be required to undergo the punishment adjudged. The  
19 superior authority may exercise the same powers with respect to the  
20 punishment imposed as may be exercised under Subsection (f) [~~(e)~~]  
21 by the officer who imposed the punishment. Before acting on an  
22 appeal from a punishment [~~of arrest in quarters for more than seven~~  
23 ~~days, correctional custody for more than seven days, forfeiture of~~  
24 ~~more than seven days' pay, reduction of one or more pay grades from~~  
25 ~~the fourth or a higher pay grade, extra duties for more than 14~~  
26 ~~days, restriction of more than 14 days' pay, or detention of more~~  
27 ~~than 14 days' pay], the authority who is to act on the appeal may~~



1 ~~[shall]~~ refer the case to a judge advocate ~~[or legal officer of the~~  
2 ~~state military forces]~~ for consideration and advice~~[, and may~~  
3 ~~similarly refer the case on appeal from a punishment imposed under~~  
4 ~~Subsection (b)]~~.

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

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

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

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

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

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

26                       (A) a military judge and not fewer than five  
27 members; or

1 (B) only a military judge, if before the court is  
2 assembled the accused, knowing the identity of the military judge  
3 and after consultation with defense counsel, requests in writing a  
4 court composed only of a military judge and the military judge  
5 approves;

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

7 (A) [~~not fewer than three members, or~~  
8 [~~(B)~~] a military judge and not fewer than three  
9 members; or

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

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

16 SECTION 6. Section 432.032, Government Code, is amended to  
17 read as follows:

18 Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL.  
19 Each force of the state military forces has court-martial  
20 jurisdiction over a member of the force who is subject to this  
21 chapter. The Texas Army National Guard and the Texas Air National  
22 Guard have court-martial jurisdiction over all enlisted members  
23 [~~all persons~~] subject to this chapter. The exercise of  
24 jurisdiction by one force over personnel of another force shall be  
25 in accordance with regulations prescribed by the governor.

26 SECTION 7. Section 432.033(a), Government Code, is amended  
27 to read as follows:

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

5 (1) reprimand;

6 (2) forfeiture of pay and allowances;

7 (3) a fine of not more than \$10,000;

8 (4) reduction of any enlisted member to any lower  
9 rank;

10 (5) [~~\$1,000 or~~] confinement for not more than five  
11 years;

12 (6) [~~360 days,~~

13 [~~(2) forfeiture of pay and allowances,~~

14 [~~(3) reprimand,~~

15 [~~(4)] dismissal or bad conduct or dishonorable  
16 discharge[~~+~~~~

17 [~~(5) reduction of a noncommissioned officer to the~~  
18 ~~ranks]; or~~

19 (7) [~~(6)] any combination of those punishments.~~

20 SECTION 8. Section 432.034, Government Code, is amended to  
21 read as follows:

22 Sec. 432.034. JURISDICTION OF SPECIAL COURT-MARTIAL. (a)  
23 Subject to Section 432.032, a special court-martial has  
24 jurisdiction to try a person subject to this chapter, except a  
25 commissioned officer, for any offense [~~for which he may be~~  
26 ~~punished~~] under this chapter. A special court-martial has the same  
27 powers of punishment as a general court-martial, except that a

1 special court-martial may not impose more than a \$4,000 [~~\$500~~] fine  
2 and [~~or~~] confinement of not more than one year [~~180 days~~] for a  
3 single offense.

4 (b) A dismissal or bad conduct [~~dishonorable~~] discharge may  
5 not be adjudged unless a complete record of the proceedings and  
6 testimony is made, counsel having the qualifications prescribed  
7 under Section 432.046(b) is detailed to represent the accused, and  
8 a military judge is detailed to the trial, except in a case in which  
9 a military judge cannot be detailed to the trial because of physical  
10 conditions or military exigencies. In a case in which a military  
11 judge is not detailed to the trial, the convening authority shall  
12 make a detailed written statement, to be appended to the record,  
13 stating the reason a military judge could not be detailed.

14 SECTION 9. Sections 432.035(a) and (c), Government Code,  
15 are amended to read as follows:

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

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

24 SECTION 10. Section 432.042, Government Code, is amended to  
25 read as follows:

26 Sec. 432.042. WHO MAY CONVENE SPECIAL COURT-MARTIAL. In  
27 the state military forces not in federal service, any commander in

1 the grade of O-5 [~~lieutenant colonel~~] or [~~in a~~] higher [~~grade~~] may  
2 convene a special court-martial.

3 SECTION 11. Section 432.043, Government Code, is amended to  
4 read as follows:

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

9 SECTION 12. Sections 432.044(a), (c), and (d), Government  
10 Code, are amended to read as follows:

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

14 (c) An enlisted member of the state military forces in a  
15 duty status who is not a member of the same unit as the accused is  
16 eligible to serve on general and special courts-martial for the  
17 trial of an enlisted member of the state military forces who may  
18 lawfully be brought before the court for trial if, before the  
19 conclusion of a session called by the military judge under Section  
20 432.064(a) before trial or, in the absence of such a session, before  
21 the court is assembled for the trial of the accused, the accused  
22 personally has requested in writing that enlisted members serve on  
23 it. After such a request, the accused may not be tried by a general  
24 or special court-martial the membership of which does not include  
25 enlisted members in a number comprising at least one-third of the  
26 total membership of the court, unless eligible members cannot be  
27 obtained because of physical conditions or military exigencies. If

1 a sufficient number of enlisted members cannot be obtained, the  
2 court may be convened and the trial held without them, but the  
3 convening authority shall make a detailed written statement, to be  
4 appended to the record, stating why they could not be obtained. In  
5 this subsection, "unit" means a regularly organized body of the  
6 state military forces not larger than a company, squadron, division  
7 of the naval militia, or body corresponding to a company, squadron,  
8 or division.

9 (d) When [~~If~~] it can be avoided, a person subject to this  
10 chapter may not be tried by a court-martial[~~, a member~~] of which any  
11 member is junior to the accused [~~him~~] in rank or grade. On  
12 convening a court-martial, the convening authority shall detail as  
13 members of the court-martial members of the state military forces  
14 that, in the convening authority's [~~his~~] opinion, are best  
15 qualified for the duty because of age, education, training,  
16 experience, length of service, and judicial temperament. A member  
17 of the state military forces is not eligible to serve as a member of  
18 a general or special court-martial if the member is the accuser, is  
19 [~~or~~] a witness, [for the prosecution] or has acted as investigating  
20 officer or counsel in the same case.

21 SECTION 13. Section 432.045(d), Government Code, is amended  
22 to read as follows:

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

26 SECTION 14. Section 432.046, Government Code, is amended by  
27 adding Subsection (b-1) to read as follows:

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

5        SECTION 15. Section 432.062(d), Government Code, is amended  
6 to read as follows:

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

14            (1) consider or evaluate the performance of duty of  
15 the member as a member of a court-martial or a witness in a  
16 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 16. Subchapter J, Chapter 432, Government Code, is  
22 amended by adding Section 432.1225 to read as follows:

23        Sec. 432.1225. PENAL CODE OFFENSES. A person subject to  
24 this chapter who commits an offense under the Penal Code is  
25 considered to violate this chapter and is subject to punishment  
26 under this chapter.

27        SECTION 17. Section 432.183, Government Code, is amended to

1 read as follows:

2           Sec. 432.183. CHAPTER [~~SECTIONS~~] TO BE EXPLAINED. This  
3 chapter [~~Sections 432.002, 432.003, 432.011-432.017, 432.021,~~  
4 ~~432.044, 432.046, 432.052, 432.062, 432.063, 432.091,~~  
5 ~~432.121-432.167, and 432.183-432.185~~] shall be carefully explained  
6 to every enlisted member at the time of or not later than the 30th  
7 day after the date of the member's [~~his~~] enlistment, transfer, or  
8 induction into, or the member's [~~his~~] order to duty in or with, any  
9 of the state military forces. It [~~They~~] shall also be explained  
10 annually to each unit of the state military forces. A complete text  
11 of this chapter and of the regulations prescribed by the governor  
12 under this chapter shall be made available to any member of the  
13 state military forces, on the member's [~~his~~] request, for the  
14 member's [~~his~~] personal examination.

15           SECTION 18. Section 432.190(b), Government Code, is amended  
16 to read as follows:

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

24           SECTION 19. The change in law made by this Act applies only  
25 to an offense committed on or after the effective date of this Act.  
26 For purposes of this section, an offense is committed before the  
27 effective date of this Act if any element of the offense occurs



1 before the effective date. An offense committed before the  
2 effective date of this Act is covered by the law in effect when the  
3 offense was committed, and the former law is continued in effect for  
4 that purpose.

5 SECTION 20. This Act takes effect September 1, 2011.