

1-1 By: Rodriguez S.B. No. 1766
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Veteran Affairs and
1-4 Military Installations; April 11, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5, Nays
1-6 0; April 11, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1766 By: Rodriguez

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the Texas Code of Military Justice.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 432.001, Government Code, is amended to
1-13 read as follows:

1-14 Sec. 432.001. DEFINITIONS. In this chapter:

1-15 (1) "Accuser" means a person who signs and swears to
1-16 charges, who directs that charges nominally be signed and sworn to
1-17 by another, or who has an interest other than an official interest
1-18 in the prosecution of the accused.

1-19 (2) "Active state duty" means duty authorized under
1-20 the constitution and laws of the state and all training authorized
1-21 under Title 32, United States Code.

1-22 (3) "Commanding officer" includes commissioned
1-23 officers and warrant officers of the state military forces who
1-24 either have been appointed to command by a superior authority or
1-25 have lawfully assumed command[, as applicable].

1-26 (4) "Convening authority" includes, in addition to the
1-27 person who convened the court, a commissioned officer commanding
1-28 temporarily, or a successor in command.

1-29 (5) "Day" means a calendar day and is not synonymous
1-30 with unit training assembly or any other accounting for training. A
1-31 punishment authorized under this chapter that is measured in terms
1-32 of days means calendar days.

1-33 (6) "Duty" means any presence or performance of any
1-34 service with or on behalf of the state military forces.

1-35 (7) "Enlisted member" means a person in an enlisted
1-36 grade.

1-37 (8) [~~6~~] "Grade" means a step or degree, in a
1-38 graduated scale of office or military rank, that is established and
1-39 designated as a grade by law or regulation.

1-40 (9) [~~7~~] "Judge advocate" means a commissioned
1-41 officer appointed to serve as a judge advocate by the adjutant
1-42 general under Section 432.005(b).

1-43 (10) [~~8~~] "Legal officer" means a commissioned
1-44 officer of the state military forces designated to perform legal
1-45 duties for a command.

1-46 (11) [~~9~~] "Military" refers to all or part of the
1-47 state military forces.

1-48 (12) [~~10~~] "Military court" means a court-martial,
1-49 court of inquiry, military commission, or provost court.

1-50 (13) [~~11~~] "Military judge" means an official of a
1-51 court-martial detailed in accordance with Section 432.045.

1-52 (14) [~~12~~] "Officer" means a commissioned or warrant
1-53 officer of the state military forces.

1-54 (15) [~~13~~] "Officer candidate" means a candidate
1-55 [~~cadet~~] of the state officer candidate school.

1-56 (16) [~~14~~] "Rank" means the order of precedence among
1-57 members of the state military forces.

1-58 (17) [~~15~~] "State judge advocate general" means the
1-59 judge advocate general of the state military forces, commissioned
1-60 in those forces, and responsible for supervising the administration
1-61 of military justice in the state military forces, and performing
1-62 other legal duties required by the adjutant general.

1-63 (18) [~~16~~] "State military forces" means the

2-1 National Guard of this state, as defined in Title 32, United States
2-2 Code [32 U.S.C. Sections 101(3), (4) and (6)], and other militia or
2-3 military forces organized under the laws of this state.

2-4 (19) [~~17~~] "Superior commissioned officer" means a
2-5 commissioned officer superior in rank or command.

2-6 SECTION 2. Section 432.002, Government Code, is amended to
2-7 read as follows:

2-8 Sec. 432.002. PERSONS SUBJECT TO CHAPTER. This chapter
2-9 applies to all members of the state military forces who are not in
2-10 federal service under Title 10, United States Code.

2-11 SECTION 3. Subchapters B and C, Chapter 432, Government
2-12 Code, are amended to read as follows:

2-13 SUBCHAPTER B. APPREHENSION AND RESTRAINT; NONJUDICIAL PUNISHMENT

2-14 Sec. 432.008 [432.011]. APPREHENSION. (a) In this
2-15 subchapter, "apprehend" means to take a person into custody.

2-16 (b) A person authorized by this chapter or by regulations
2-17 issued under it to apprehend a person subject to this chapter, a
2-18 marshal of a court-martial appointed under this chapter, and a
2-19 peace officer having authority to apprehend offenders under the
2-20 laws of the United States or of a state, may do so on reasonable
2-21 belief that an offense has been committed and that the person
2-22 apprehended committed it.

2-23 (c) Commissioned officers, warrant officers, and
2-24 noncommissioned officers may quell quarrels, frays, and disorders
2-25 among persons subject to this chapter and apprehend persons subject
2-26 to this chapter who take part in those activities.

2-27 Sec. 432.009 [432.012]. APPREHENSION OF DESERTERS. A civil
2-28 officer or peace officer having authority to apprehend offenders
2-29 under the laws of the United States or a state, territory,
2-30 commonwealth, or possession, or the District of Columbia, may
2-31 summarily apprehend a deserter from the state military forces and
2-32 deliver the deserter into the custody of the state military forces.

2-33 Sec. 432.010 [432.013]. IMPOSITION OF RESTRAINT. (a) In
2-34 this subchapter:

2-35 (1) "Arrest" means the restraint of a person by an
2-36 order, not imposed as a punishment for an offense, directing the
2-37 person to remain within certain specified limits.

2-38 (2) "Confinement" means the physical restraint of a
2-39 person.

2-40 (b) An enlisted member may be ordered into arrest or
2-41 confinement by a commissioned officer by an oral or written order
2-42 delivered in person, through other persons subject to this chapter,
2-43 or through a person authorized by this chapter to apprehend
2-44 persons. A commanding officer may authorize warrant officers or
2-45 noncommissioned officers to order enlisted members of the officer's
2-46 [his] company or subject to the officer's [his] authority into
2-47 arrest or confinement.

2-48 (c) A commissioned officer or warrant officer may be ordered
2-49 apprehended or into arrest or confinement only by a commanding
2-50 officer to whose authority the person [he] is subject, by an oral or
2-51 written order delivered in person or by another commissioned
2-52 officer. The authority to order such persons apprehended or into
2-53 arrest or confinement may not be delegated.

2-54 (d) A person may not be ordered apprehended or into arrest
2-55 or confinement except for probable cause.

2-56 (e) This section does not limit the authority of persons
2-57 authorized to apprehend offenders to secure the custody of an
2-58 alleged offender until the proper authority may be notified.

2-59 Sec. 432.011 [432.014]. RESTRAINT OF PERSONS CHARGED WITH
2-60 OFFENSES. A person subject to this chapter charged with an offense
2-61 under this chapter shall be ordered into arrest or confinement, as
2-62 circumstances may require, but if charged with only an offense
2-63 normally tried by a summary court-martial, the person may not
2-64 ordinarily be placed in confinement. If a person subject to this
2-65 chapter is placed in arrest or confinement before trial, immediate
2-66 steps shall be taken to inform the person [him] of the specific
2-67 wrong of which the person [he] is accused and to try the person
2-68 [him] or to dismiss the charges and release the person [him]. A
2-69 person confined other than in a guardhouse, whether before, during,

3-1 or after trial by a military court, shall be confined in a civilian
 3-2 [~~civil~~] jail.

3-3 Sec. 432.012 [~~432.015~~]. REPORTS AND RECEIVING OF
 3-4 PRISONERS. (a) A provost marshal, commander of a guard, master at
 3-5 arms, warden, keeper, or officer of a city or county jail or any
 3-6 other jail designated under Section 432.011 [~~432.014~~] may not
 3-7 refuse to receive or keep a prisoner committed to the person's [~~his~~]
 3-8 charge, when the committing person furnishes a statement, signed by
 3-9 the committing person [~~him~~], of the offense charged against the
 3-10 prisoner.

3-11 (b) A commander of a guard, master at arms, warden, keeper,
 3-12 or officer of a city or county jail or of any other jail designated
 3-13 under Section 432.011 [~~432.014~~] to whose charge a prisoner is
 3-14 committed shall, within 24 hours after that commitment or as soon as
 3-15 the person [~~he~~] is relieved from guard, report to the commanding
 3-16 officer of the prisoner the name of the prisoner, the offense
 3-17 charged against the prisoner [~~him~~], and the name of the person who
 3-18 ordered or authorized the commitment.

3-19 Sec. 432.013 [~~432.016~~]. PUNISHMENT PROHIBITED BEFORE
 3-20 TRIAL. Subject to Section 432.093, a person, while being held for
 3-21 trial or the result of trial, may not be subjected to punishment or
 3-22 penalty other than arrest or confinement on the charges pending
 3-23 against the person, nor may the arrest or confinement imposed on the
 3-24 person be more rigorous than the circumstances require to ensure
 3-25 the person's presence, but the person may be subjected to minor
 3-26 punishment during that period for infractions of discipline.

3-27 Sec. 432.014 [~~432.017~~]. DELIVERY OF OFFENDERS TO CIVIL
 3-28 AUTHORITIES. (a) Under regulations prescribed under this chapter
 3-29 a person subject to this chapter who is on active state duty and who
 3-30 is accused of an offense against civil authority may be delivered,
 3-31 on request, to the civil authority for trial.

3-32 (b) If delivery under this section is made to a civil
 3-33 authority of a person undergoing sentence of a court-martial, the
 3-34 delivery, if followed by conviction in a civil tribunal, interrupts
 3-35 the execution of the sentence of the court-martial, and the
 3-36 offender, after having answered to the civil authorities for the
 3-37 offense, on the request of competent military authority, shall be
 3-38 returned to military custody for the completion of the sentence.

3-39 [~~SUBCHAPTER C. NONJUDICIAL PUNISHMENT~~]

3-40 Sec. 432.015 [~~432.021~~]. COMMANDING OFFICER'S NONJUDICIAL
 3-41 PUNISHMENT. (a) Under regulations as [~~that the governor~~] may be
 3-42 prescribed, any commanding officer may impose disciplinary
 3-43 punishments for minor offenses without the intervention of a
 3-44 court-martial in accordance with this subchapter. There is no
 3-45 right to trial by court-martial in lieu of nonjudicial punishment
 3-46 imposed under this section. Only the governor, the adjutant
 3-47 general, or an officer of a general or flag rank in command may
 3-48 delegate the powers under this section to a principal assistant who
 3-49 is a member of the state military forces.

3-50 (b) Any accused person who is facing discipline under this
 3-51 section [~~prescribe, limitations may be placed on the powers granted~~
 3-52 ~~by this section with respect to the kind and amount of punishment~~
 3-53 ~~authorized, the categories of commanding officers and warrant~~
 3-54 ~~officers exercising command authorized to exercise those powers,~~
 3-55 ~~the applicability of this section to an accused who demands trial by~~
 3-56 ~~court-martial, and the kinds of courts-martial to which the case~~
 3-57 ~~may be referred on such a demand. However, except in the case of a~~
 3-58 ~~member attached to or embarked in a vessel, punishment may not be~~
 3-59 ~~imposed on a member of the state military forces under this section~~
 3-60 ~~if the member, before the imposition of the punishment, has~~
 3-61 ~~demanded trial by court-martial in lieu of the punishment. Under~~
 3-62 ~~similar regulations, rules may be prescribed with respect to the~~
 3-63 ~~suspension of punishments authorized by this section. If~~
 3-64 ~~authorized by regulations of the governor, the governor or an~~
 3-65 ~~officer of general rank in command may delegate the governor's or~~
 3-66 ~~officer's powers under this section to a principal assistant. If~~
 3-67 ~~disciplinary punishment other than admonition or reprimand is to be~~
 3-68 ~~imposed, the accused] shall be afforded the opportunity to be~~
 3-69 represented by defense counsel having the qualifications

4-1 prescribed under Section 432.046(b), if such a counsel is
 4-2 reasonably available. Otherwise, the accused shall be afforded the
 4-3 opportunity to be represented by any available commissioned officer
 4-4 of the accused's [~~his~~] choice. The accused may also be represented
 4-5 by [~~employ~~] civilian counsel [~~of his own choosing~~] at no [~~his own~~]
 4-6 expense to the state. In all proceedings, the accused is allowed
 4-7 three duty days, or longer on written justification, to reply to the
 4-8 notification of intent to impose punishment under this section.

4-9 (c) Any [~~(b) Subject to Subsection (a), a~~] commanding
 4-10 officer may [~~, in addition to or in lieu of admonition or reprimand,~~]
 4-11 impose on enlisted members in the officer's [~~one or more of the~~]
 4-12 following disciplinary punishments for minor offenses without the
 4-13 intervention of a court-martial:

4-14 [~~(1) on officers of his~~] command:

4-15 (1) a reprimand;

4-16 (2) [~~(A) restriction to certain specified limits~~]
 4-17 with or without suspension from duty, for not more than 30 days; or
 4-18 [~~(B) if imposed by the governor, or an officer of~~]
 4-19 general rank in command:

4-20 [(i) ~~arrest in quarters for not more than 30~~]
 4-21 days;

4-22 [(ii) ~~forfeiture of not more than half of~~]
 4-23 one month's pay a month for two months or] a fine equal to an amount
 4-24 that is [~~of~~] not more than seven days' pay [\$75]; and

4-25 (3) a reduction to the next inferior pay grade.

4-26 (d) Any [~~(iii) restriction to certain specified limits,~~]
 4-27 with or without suspension from duty, for not more than 60 days; or
 4-28 [(iv) ~~detention of not more than half of one~~]
 4-29 month's pay a month for three months; and

4-30 [(2) ~~on other personnel of his command:~~

4-31 [(A) ~~if imposed on a person attached to or~~]
 4-32 embarked in a vessel, confinement for not more than three days;

4-33 [(B) ~~correctional custody for not more than seven~~]
 4-34 days;

4-35 [(C) ~~forfeiture of not more than seven days' pay~~]
 4-36 or a fine of not more than \$50;

4-37 [(D) ~~reduction of not more than two pay grades,~~]
 4-38 if imposed by a] commanding officer of the grade of O-4 [colonel] or
 4-39 above may impose on enlisted members in the officer's command:

4-40 (1) a reprimand;

4-41 (2) [~~, or reduction of not more than one pay grade, if~~]
 4-42 imposed by a commanding officer of a grade lower than colonel;

4-43 [(E) ~~extra duties including fatigue or other~~]
 4-44 duties, for not more than 30 days, which need not be consecutive,
 4-45 and for not more than two hours a day, holidays included;

4-46 [(F) ~~restriction to certain specified limits,~~]
 4-47 with or without suspension from duty for not more than 14 days;

4-48 [(G) ~~detention of not more than 14 days' pay; or~~

4-49 [(H) ~~if imposed by an officer of the grade of~~]
 4-50 major or above:

4-51 [(i) ~~the punishment authorized under~~]
 4-52 Subsection (b)(2)(A);

4-53 [(ii) ~~correctional custody for not more~~]
 4-54 than 30 days;

4-55 [(iii) ~~forfeiture of not more than half of~~]
 4-56 one month's pay a month for two months or] a fine equal to an amount
 4-57 that is [~~of~~] not more than one month's pay [\$100]; and

4-58 (3) a [(iv)] reduction to the lowest or any
 4-59 intermediate pay grade, [~~if the grade from which demoted is within~~]
 4-60 the promotion authority of the officer imposing the reduction or an
 4-61 officer subordinate to the one who imposes the reduction,] but an
 4-62 enlisted member in a pay grade above E-4 may not be reduced more
 4-63 than two pay grades[+]

4-64 [(v) ~~extra duties, including fatigue or~~]
 4-65 other duties, for not more than 45 days which need not be
 4-66 consecutive and for not more than two hours a day, holidays
 4-67 included;

4-68 [(vi) ~~restriction to certain specified~~]
 4-69 limits with or without suspension from duty, for not more than 60

5-1 ~~days; or~~

5-2 ~~[(vii) detention of not more than half of~~
5-3 ~~one month's pay a month for three months.~~

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

5-19 ~~[(d) An officer in charge may impose on enlisted members~~
5-20 ~~assigned to the unit of which he is in charge those of the~~
5-21 ~~punishments authorized under Subsections (b)(2)(A)-(C) that the~~
5-22 ~~governor specifically prescribes by regulation].~~

5-23 (e) The governor, the adjutant general, an officer
5-24 exercising general court-martial convening authority, or an
5-25 officer of a general or flag rank in command may impose:

5-26 (1) on officers in the officer's command:

5-27 (A) a reprimand; and

5-28 (B) a fine equal to an amount that is not more
5-29 than one month's pay; and

5-30 (2) on enlisted members in the officer's command, any
5-31 punishment authorized under Subsection (d).

5-32 (f) The officer who imposes the punishment authorized in
5-33 this section [Subsection (b)] or the officer's [his] successor in
5-34 command may at any time suspend, set aside, reduce, or remit
5-35 [probationally] any part or amount of the [unexecuted] punishment
5-36 [imposed and may suspend probationally a reduction in grade or fine
5-37 or forfeiture imposed under Subsection (b), whether or not
5-38 executed. In addition, the officer may, at any time, remit or
5-39 mitigate any part or amount of the unexecuted punishment imposed
5-40 and may set aside in whole or in part the punishment, whether
5-41 executed or unexecuted,] and restore all rights, privileges, and
5-42 property affected. The [officer may also mitigate reduction in
5-43 grade to fine or forfeiture or detention of pay. If mitigating
5-44 arrest in quarters to restriction or extra duties to restriction,
5-45 the] mitigated punishment may not be for a greater amount [period]
5-46 than the punishment mitigated. When [If mitigating forfeiture of
5-47 pay to detention of pay, the amount of the detention may not be
5-48 greater than the amount of the forfeiture. If] mitigating
5-49 reduction in grade to a fine, [forfeiture, or detention of pay,] the
5-50 amount of the fine[, forfeiture, or detention] may not be greater
5-51 than the amount that could have been imposed initially under this
5-52 section by the officer who imposed the punishment mitigated.

5-53 (g) [(f)] A person punished under this section who
5-54 considers the punishment unjust or disproportionate to the offense
5-55 may, through the proper channel, appeal to the next superior
5-56 authority not later than the 15th day after the date the punishment
5-57 is either announced or sent to the accused, as the commanding
5-58 officer determines [through the proper channel]. The appeal shall
5-59 be promptly forwarded and decided, but the person punished may in
5-60 the meantime be required to undergo the punishment adjudged. The
5-61 superior authority may exercise the same powers with respect to the
5-62 punishment imposed as may be exercised under Subsection (f) [(e)]
5-63 by the officer who imposed the punishment. Before acting on an
5-64 appeal from a punishment [of arrest in quarters for more than seven
5-65 days, correctional custody for more than seven days, forfeiture of
5-66 more than seven days' pay, reduction of one or more pay grades from
5-67 the fourth or a higher pay grade, extra duties for more than 14
5-68 days, restriction of more than 14 days' pay, or detention of more
5-69 than 14 days' pay], the authority who is to act on the appeal may

6-1 [~~shall~~] refer the case to a judge advocate [~~or legal officer of the~~
6-2 ~~state military forces~~] for consideration and advice[, ~~and may~~
6-3 ~~similarly refer the case on appeal from a punishment imposed under~~
6-4 ~~Subsection (b)~~].

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

6-14 (i) Regulations [~~(h) The governor by regulation~~] may
6-15 prescribe the form of records to be kept of proceedings under this
6-16 section and [~~may require~~] that certain categories of those
6-17 proceedings shall be in writing.

6-18 [~~(i) A commanding officer may delegate authority to make a~~
6-19 ~~reduction in pay grade under Subsection (b)(2)(D) to the commanding~~
6-20 ~~officer's executive officer, chief of staff, or vice commander.~~]

6-21 SECTION 4. Section 432.031, Government Code, is amended to
6-22 read as follows:

6-23 Sec. 432.031. COURTS-MARTIAL CLASSIFIED. The three kinds
6-24 of courts-martial in each of the state military forces are:

6-25 (1) general court-martial, consisting of:
6-26 (A) a military judge and not fewer than five
6-27 members; or

6-28 (B) only a military judge, if before the court is
6-29 assembled the accused, knowing the identity of the military judge
6-30 and after consultation with defense counsel, requests in writing a
6-31 court composed only of a military judge and the military judge
6-32 approves;

6-33 (2) special court-martial, consisting of:
6-34 (A) [~~not fewer than three members; or~~
6-35 [~~(B)~~] a military judge and not fewer than three
6-36 members; or

6-37 (B) [~~(C)~~] only a military judge, if one has been
6-38 detailed to the court, and the accused under the same conditions as
6-39 those prescribed in Subdivision (1)(B) requests; and

6-40 (3) summary court-martial, consisting of one officer,
6-41 who must be a military judge or an attorney licensed to practice law
6-42 in this state.

6-43 SECTION 5. Section 432.032, Government Code, is amended to
6-44 read as follows:

6-45 Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL.
6-46 Each force of the state military forces has court-martial
6-47 jurisdiction over a member of the force who is subject to this
6-48 chapter. The Texas Army National Guard and the Texas Air National
6-49 Guard have court-martial jurisdiction over all enlisted members
6-50 [~~all persons~~] subject to this chapter. The exercise of
6-51 jurisdiction by one force over personnel of another force shall be
6-52 in accordance with regulations prescribed by the governor.

6-53 SECTION 6. Subsection (a), Section 432.033, Government
6-54 Code, is amended to read as follows:

6-55 (a) Subject to Section 432.032, a general court-martial has
6-56 jurisdiction to try a person subject to this chapter for any offense
6-57 made punishable by this chapter and may, under limitations the
6-58 governor prescribes, adjudge any of the following punishments:

6-59 (1) reprimand;
6-60 (2) forfeiture of pay and allowances;
6-61 (3) a fine of not more than \$10,000;
6-62 (4) reduction of any enlisted member to any lower

6-63 rank;
6-64 (5) [~~\$1,000 or~~] confinement for not more than five
6-65 years;

6-66 (6) [~~360 days,~~
6-67 [~~(2) forfeiture of pay and allowances,~~
6-68 [~~(3) reprimand,~~
6-69 [~~(4)~~] dismissal or bad conduct or dishonorable

7-1 discharge[+
 7-2 [~~(5) reduction of a noncommissioned officer to the~~
 7-3 ~~ranks~~]; or
 7-4 (7) [~~(6)~~] any combination of those punishments.

7-5 SECTION 7. Section 432.034, Government Code, is amended to
 7-6 read as follows:

7-7 Sec. 432.034. JURISDICTION OF SPECIAL COURT-MARTIAL.

7-8 (a) Subject to Section 432.032, a special court-martial has
 7-9 jurisdiction to try a person subject to this chapter, except a
 7-10 commissioned officer, for any offense [~~for which he may be~~
 7-11 ~~punished~~] under this chapter. A special court-martial has the same
 7-12 powers of punishment as a general court-martial, except that a
 7-13 special court-martial may not impose more than a \$4,000 [~~\$500~~] fine
 7-14 and [~~or~~] confinement of not more than one year [~~180 days~~] for a
 7-15 single offense.

7-16 (b) A dismissal or bad conduct [~~dishonorable~~] discharge may
 7-17 not be adjudged unless a complete record of the proceedings and
 7-18 testimony is made, counsel having the qualifications prescribed
 7-19 under Section 432.046(b) is detailed to represent the accused, and
 7-20 a military judge is detailed to the trial, except in a case in which
 7-21 a military judge cannot be detailed to the trial because of physical
 7-22 conditions or military exigencies. In a case in which a military
 7-23 judge is not detailed to the trial, the convening authority shall
 7-24 make a detailed written statement, to be appended to the record,
 7-25 stating the reason a military judge could not be detailed.

7-26 SECTION 8. Subsections (a) and (c), Section 432.035,
 7-27 Government Code, are amended to read as follows:

7-28 (a) Subject to Section 432.032, a summary court-martial has
 7-29 jurisdiction to try persons subject to this chapter, except
 7-30 officers, for any offense under [~~made punishable by~~] this chapter.

7-31 (c) A summary court-martial may sentence a person to pay a
 7-32 fine of not more than \$1,000 and [~~\$200 or~~] confinement for not more
 7-33 than 90 days for a single offense, to forfeit [~~forfeiture of~~] pay
 7-34 and allowances, and to reduction of a noncommissioned officer to
 7-35 any lower rank [~~the ranks~~].

7-36 SECTION 9. Section 432.042, Government Code, is amended to
 7-37 read as follows:

7-38 Sec. 432.042. WHO MAY CONVENE SPECIAL COURT-MARTIAL. In
 7-39 the state military forces not in federal service, any commander in
 7-40 the grade of O-5 [~~lieutenant colonel~~] or [~~in a~~] higher [~~grade~~] may
 7-41 convene a special court-martial.

7-42 SECTION 10. Section 432.043, Government Code, is amended to
 7-43 read as follows:

7-44 Sec. 432.043. WHO MAY CONVENE SUMMARY COURT-MARTIAL. In
 7-45 the state military forces not in federal service, any commander in
 7-46 the grade of O-4 [~~major~~] or [~~in a~~] higher [~~grade~~] may convene a
 7-47 summary court-martial.

7-48 SECTION 11. Subsections (a), (c), and (d), Section 432.044,
 7-49 Government Code, are amended to read as follows:

7-50 (a) Any [~~A~~] state commissioned officer in a duty status is
 7-51 eligible to serve on a court-martial [~~for the trial of a person who~~
 7-52 ~~may lawfully be brought before the court for trial~~].

7-53 (c) An enlisted member of the state military forces in a
 7-54 duty status who is not a member of the same unit as the accused is
 7-55 eligible to serve on general and special courts-martial for the
 7-56 trial of an enlisted member of the state military forces who may
 7-57 lawfully be brought before the court for trial if, before the
 7-58 conclusion of a session called by the military judge under Section
 7-59 432.064(a) before trial or, in the absence of such a session, before
 7-60 the court is assembled for the trial of the accused, the accused
 7-61 personally has requested in writing that enlisted members serve on
 7-62 it. After such a request, the accused may not be tried by a general
 7-63 or special court-martial the membership of which does not include
 7-64 enlisted members in a number comprising at least one-third of the
 7-65 total membership of the court, unless eligible members cannot be
 7-66 obtained because of physical conditions or military exigencies. If
 7-67 a sufficient number of enlisted members cannot be obtained, the
 7-68 court may be convened and the trial held without them, but the
 7-69 convening authority shall make a detailed written statement, to be

8-1 appended to the record, stating why they could not be obtained. In
 8-2 this subsection, "unit" means a regularly organized body of the
 8-3 state military forces not larger than a company, squadron, division
 8-4 of the naval militia, or body corresponding to a company, squadron,
 8-5 or division.

8-6 (d) ~~When [if]~~ it can be avoided, a person subject to this
 8-7 chapter may not be tried by a court-martial~~[, a member]~~ of which any
 8-8 member is junior to the accused [him] in rank or grade. On
 8-9 convening a court-martial, the convening authority shall detail as
 8-10 members of the court-martial members of the state military forces
 8-11 that, in the convening authority's [his] opinion, are best
 8-12 qualified for the duty because of age, education, training,
 8-13 experience, length of service, and judicial temperament. A member
 8-14 of the state military forces is not eligible to serve as a member of
 8-15 a general or special court-martial if the member is the accuser, is
 8-16 ~~[or]~~ a witness, ~~[for the prosecution]~~ or has acted as investigating
 8-17 officer or counsel in the same case.

8-18 SECTION 12. Subsection (d), Section 432.045, Government
 8-19 Code, is amended to read as follows:

8-20 (d) A person who is the accuser, is ~~[or]~~ a witness, ~~[for the~~
 8-21 ~~prosecution]~~ or has acted as investigating officer or counsel in a
 8-22 case is not eligible to act as military judge in the same case.

8-23 SECTION 13. Section 432.046, Government Code, is amended by
 8-24 adding Subsection (b-1) to read as follows:

8-25 (b-1) Trial counsel or defense counsel detailed for a
 8-26 general court-martial may not be under the supervision or command
 8-27 of the other counsel unless the accused and the prosecution
 8-28 expressly waive this restriction.

8-29 SECTION 14. Subsection (d), Section 432.062, Government
 8-30 Code, is amended to read as follows:

8-31 (d) In the preparation of an effectiveness, fitness, or
 8-32 efficiency report, or another report or document used in whole or
 8-33 part for determining whether a member of the state military forces
 8-34 is qualified to be advanced in grade, in determining the assignment
 8-35 or transfer of a member of the state military forces, or in
 8-36 determining whether a member of the state military forces should be
 8-37 retained on duty, a person subject to this chapter may not:

8-38 (1) consider or evaluate the performance of duty of
 8-39 the member as a member of a court-martial or a witness in a
 8-40 court-martial; or

8-41 (2) give a less favorable rating or evaluation of a
 8-42 member of the state military forces because of the zeal with which
 8-43 the member, as counsel, represented an accused before a
 8-44 court-martial.

8-45 SECTION 15. Subchapter J, Chapter 432, Government Code, is
 8-46 amended by adding Section 432.1225 to read as follows:

8-47 Sec. 432.1225. PENAL CODE OFFENSES. A person subject to
 8-48 this chapter who commits an offense under the Penal Code is
 8-49 considered to violate this chapter and is subject to punishment
 8-50 under this chapter.

8-51 SECTION 16. Section 432.183, Government Code, is amended to
 8-52 read as follows:

8-53 Sec. 432.183. CHAPTER [SECTIONS] TO BE EXPLAINED. This
 8-54 chapter [Sections 432.002, 432.003, 432.011-432.017, 432.021,
 8-55 432.044, 432.046, 432.052, 432.062, 432.063, 432.091,
 8-56 432.121-432.167, and 432.183-432.185] shall be carefully explained
 8-57 to every enlisted member at the time of or not later than the 30th
 8-58 day after the date of the member's [his] enlistment, transfer, or
 8-59 induction into, or the member's [his] order to duty in or with, any
 8-60 of the state military forces. It [They] shall also be explained
 8-61 annually to each unit of the state military forces. A complete text
 8-62 of this chapter and of the regulations prescribed by the governor
 8-63 under this chapter shall be made available to any member of the
 8-64 state military forces, on the member's [his] request, for the
 8-65 member's [his] personal examination.

8-66 SECTION 17. Subsection (b), Section 432.190, Government
 8-67 Code, is amended to read as follows:

8-68 (b) A fine or forfeiture imposed by nonjudicial punishment
 8-69 or a special or summary court-martial shall be paid to the officer

9-1 imposing nonjudicial punishment or ordering the court or to the
9-2 officer commanding at that time. The officer, not later than the
9-3 fifth day after the date of the payment's receipt, shall place it to
9-4 the credit of the military unit fund of the unit of which the person
9-5 fined was a member when the fine was imposed.

9-6 SECTION 18. The change in law made by this Act applies only
9-7 to an offense committed on or after the effective date of this Act.
9-8 For purposes of this section, an offense is committed before the
9-9 effective date of this Act if any element of the offense occurs
9-10 before the effective date. An offense committed before the
9-11 effective date of this Act is covered by the law in effect when the
9-12 offense was committed, and the former law is continued in effect for
9-13 that purpose.

9-14 SECTION 19. This Act takes effect September 1, 2011.

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