House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 143

# HOUSE BILL 2311

AN ACT

AMENDING SECTIONS 26-101, 26-1015, 26-1018, 26-1020 AND 26-1026, ARIZONA REVISED STATUTES; RELATING TO MILITARY JUSTICE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 26-101, Arizona Revised Statutes, is amended to read:

26-101. Department of emergency and military affairs; organization; adjutant general; qualifications

A. The department of emergency and military affairs is established consisting of a division of emergency management and other divisions or offices as determined by the adjutant general pursuant to section 26-102, subsection C, paragraph 8.

B. The department shall consist of the adjutant general and such other officers, warrant officers, enlisted personnel and employees as deemed necessary.

C. The department shall be administered and controlled by the governor as commander-in-chief. The adjutant general shall be the director of the department.

D. The adjutant general shall be appointed by the governor pursuant to section 38-211 and shall serve at the pleasure of the governor. The person appointed shall be a citizen of the United States AND ESTABLISH THEIR DOMICILE IN ARIZONA FOR RESIDENCY PURPOSES WITHIN NINETY DAYS OF APPOINTMENT ~~and a resident of the state of Arizona~~. At the time of the appointment, the person appointed shall have qualifications required by the United States department of defense for the adjutant general and shall attain federal recognition in a grade not less than brigadier general not later than ~~one year~~ TWO YEARS after the appointment. ~~The adjutant general shall have served not less than five years in the national guard of Arizona in the last ten years.~~ Failure to meet these qualifications, failure to retain federal recognition or attainment of the age provided by federal law relating to state adjutants general shall terminate the appointment.

E. The adjutant general shall receive compensation as determined pursuant to section 38-611, and shall devote full time to the office.

F. At the time of appointment, the adjutant general shall receive the state rank of major general and, at that time, shall become the ranking officer in the department of emergency and military affairs.

Sec. 2. Section 26-1015, Arizona Revised Statutes, is amended to read:

26-1015. Commanding officer; nonjudicial punishment

A. Under rules the governor adopts and under ~~such~~ ANY additional rules ~~as prescribed~~ ADOPTED by the adjutant general, limitations may be placed on the powers granted by this chapter with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this chapter to an accused who demands trial by court-martial and the kinds of courts-martial to which the case may be referred on ~~such~~ a demand. Punishment may not be imposed on any member of the national guard under this chapter if the member ~~has~~, before the imposition of ~~such~~ THE punishment, HAS demanded trial by court-martial in lieu of ~~such~~ THE punishment. A MEMBER OF THE NATIONAL GUARD MAY NOT DEMAND A

TRIAL BY COURT-MARTIAL IN LIEU OF THE PUNISHMENT IF THE NONJUDICIAL PUNISHMENT OPTIONS DO NOT INCLUDE ARREST IN QUARTERS OR RESTRICTION. Similar rules may be ~~prescribed~~ ADOPTED with respect to the suspension of authorized punishments. If authorized by rules of the adjutant general, a commanding officer exercising general court-martial jurisdiction or an officer of general flag rank in command may delegate ~~his~~ THE OFFICER'S powers under this article to a principal assistant.

B. Subject to subsection A OF THIS SECTION, any commanding officer, in addition to or in lieu of admonition or reprimand, may impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

1. On officers of his command:

(a) Restriction to certain specified limits, with or without suspension from duty, for not more than thirty consecutive days.

(b) If imposed by the governor, the adjutant general or a general officer in command:

(i) Arrest in quarters for not more than thirty consecutive days.

(ii) Forfeiture or a fine in an amount of not more than fourteen drill periods.

(iii) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days.

(iv) Detention of not more than one-half of one month's pay per month for three months.

2. On other personnel of his command:

(a) Correctional custody for not more than seven consecutive days.

(b) Forfeiture or fine in an amount of not more than seven drill periods.

(c) Reduction to the next inferior pay grade, if the grade from which the person demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction.

(d) Extra duties, including fatigue or other duties, for not more than fourteen consecutive days.

(e) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days.

(f) Detention of not more than fourteen days' pay.

(g) If imposed by an officer of the grade of major or above:

(i) Correctional custody for not more than thirty consecutive days.

(ii) Forfeiture or fine in an amount of not more than fourteen drill periods.

(iii) Reduction to the lowest or any intermediate pay grade, ~~if the grade from which the person is demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction,~~ but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades. THE REDUCTION MUST BE IMPOSED BY AN OFFICER WHO IS DELEGATED TO PERFORM THE REDUCTION BY THE ADJUTANT GENERAL.

(iv) Extra duties, including fatigue or other duties, for not more than forty-five consecutive days.

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days.

(vi) Detention of not more than one-half of one month's pay per month for three months.

C. Detention of pay shall be for a stated period of not more than one year, but if the offender's term of service expires earlier, the detention shall terminate on that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties or restriction may be combined to run consecutively in the maximum amount that may be imposed for each. If any of those punishments are combined to run consecutively, there shall be an apportionment. In addition, forfeiture of pay shall not be combined with detention of pay without an apportionment. For the purpose of this subsection, "correctional custody" means the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties or hard labor. If practicable, correctional custody shall not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

D. An officer in charge may impose on enlisted members assigned to the unit of which ~~he~~ THE OFFICER is in charge punishments authorized under subsection B, paragraph 2 OF THIS SECTION as the governor specifically prescribes by rule.

E. The officer who imposes a punishment authorized in subsection B OF THIS SECTION or ~~his~~ THE OFFICER'S successor in command may suspend probationally, at any time, any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection B OF THIS SECTION, whether or not the punishment is executed. In addition, ~~he~~ THE OFFICER may remit or mitigate, at any time, any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges and property affected. ~~He~~ THE OFFICER may also mitigate reduction in grade to forfeiture or detention of pay. If mitigating an arrest in quarters to restriction, a correctional custody to extra duties or restriction, or both, or extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. If mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. If mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

F. A person who is punished under this article and who considers ~~his~~ THE punishment unjust or disproportionate to the offense may appeal, through the proper channel, to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may be required in

the meantime to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection E OF THIS SECTION by the officer who imposed the punishment. Before acting on an appeal from a punishment of arrest in quarters for more than seven days, correctional custody for more than seven days, forfeiture of more than seven days' pay, reduction of one or more pay grades from the fourth or a higher grade, extra duties for more than fourteen days, restriction for more than fourteen days or detention of more than fourteen days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice and may so refer the case on appeal from any punishment imposed under subsection B OF THIS SECTION.

G. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section. The fact that a disciplinary punishment has been enforced may be shown by the accused ~~upon~~ AT trial, and if ~~so~~ shown shall be considered in determining the measure of punishment to be adjudged if there is a finding of guilty.

H. The adjutant general, by rule, may prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

Sec. 3. Section 26-1018, Arizona Revised Statutes, is amended to read:

26-1018. Jurisdiction of general courts-martial

Subject to section 26-1017, general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and, under ~~such~~ limitations as the governor prescribes, may sentence convicted persons to any combination of the following:

1. A fine of not more than ~~two~~ THREE hundred SIXTY-FIVE dollars.
2. Forfeiture of pay and allowances.
3. A reprimand.
4. Dismissal or dishonorable discharge.
5. Reduction of a noncommissioned officer to the ranks.
6. CONFINEMENT OF NOT MORE THAN THREE HUNDRED SIXTY-FIVE DAYS.

Sec. 4. Section 26-1020, Arizona Revised Statutes, is amended to read:

26-1020. Jurisdiction of summary courts-martial

Subject to section 26-1017, summary courts-martial have jurisdiction to try persons subject to this chapter, except officers and candidates, for any offense made punishable by this chapter. A person with respect to whom summary courts-martial have jurisdiction shall not be brought to trial before a summary court-martial if ~~he~~ THE PERSON objects. If objection to trial by summary courts-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Under ~~such~~ limitations ~~as~~ THAT the governor prescribes, summary courts-martial may sentence an offender to ~~a fine of not more than twenty-five dollars for a single offense, to~~

~~forfeiture of pay and allowances and to reduction of a noncommissioned officer to the ranks.~~ ANY COMBINATION OF THE FOLLOWING:

1. FORFEITURE OF TWO-THIRDS PAY AND ALLOWANCES FOR ONE MONTH.
2. REDUCTION OF A NONCOMMISSIONED OFFICER TO THE RANKS.
3. A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS FOR EACH OFFENSE.

Sec. 5. Section 26-1026, Arizona Revised Statutes, is amended to read:

26-1026. Military judge of a general or special court-martial

A. A military judge shall be detailed to each general court-martial. Subject to rules of the adjutant general, a military judge may be detailed to any special court-martial. The adjutant general shall ~~prescribe~~ ADOPT rules providing for the manner in which military judges are detailed for ~~such~~ THE courts-martial and for the persons who are authorized to detail military judges for ~~such~~ THE courts-martial. The military judge shall preside over each open session of the court-martial to which ~~he~~ THE MILITARY JUDGE has been detailed.

B. A military judge ~~shall be a commissioned officer who is a member in good standing before the highest court of any state or territory of the United States and who is certified as a military judge by the state judge advocate~~ MUST BE A MEMBER IN GOOD STANDING OF THE STATE BAR OF ARIZONA AND A CURRENT OR FORMER MEMBER OF THE UNITED STATES ARMED FORCES OR THE ARMED FORCES OF THIS STATE WHO IS APPOINTED AS A MILITARY JUDGE BY THE GOVERNOR AFTER CERTIFICATION BY THE STATE JUDGE ADVOCATE AS HAVING MET THE QUALIFICATIONS.

C. The military judge of a general court-martial shall be designated by the state judge advocate, or ~~his~~ THE STATE JUDGE ADVOCATE'S designee, for detail in accordance with rules ~~prescribed~~ ADOPTED under subsection A OF THIS SECTION. Unless the court-martial was convened by the governor, neither the convening authority nor any member of ~~his~~ THE CONVENING AUTHORITY'S staff shall prepare or review any report concerning the effectiveness, fitness or efficiency of the military judge ~~so~~ detailed, which relates to ~~his~~ THE MILITARY JUDGE'S performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform duties of a judicial or nonjudicial nature other than those relating to ~~his~~ THE OFFICER'S primary duty as a military judge of a general court-martial if ~~such~~ THE duties are assigned to ~~him~~ THE OFFICER by or with the approval of the state judge advocate or ~~his~~ THE STATE JUDGE ADVOCATE'S designee.

D. ~~No~~ A person is NOT eligible to act as military judge in a case if ~~he~~ THE PERSON is the accuser or a witness or has acted as AN investigating officer or a counsel in the same case.

E. The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel and defense counsel, ~~nor may he~~ AND THE MILITARY JUDGE MAY NOT vote with the members of the court.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2014.

Passed the House February 20, 2014

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 17, 2014

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill received by the Governor this

17 day of April, 2014

at 2:35 o'clock P M.

Secretary to the Governor

Approved this 22nd day of

April

at 3:21 o'clock P. M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this 23rd day of April, 2014

at 9:40 o'clock a M.

Secretary of State

H.B. 2311