

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 511

Short Title: NC National Guard/Courts-Martial. (Public)

Sponsors: Representatives Grange, Szoka, and Goodwin (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 1, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATUTES ON COURTS-MARTIAL FOR THE NORTH
3 CAROLINA NATIONAL GUARD.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3 of Chapter 127A of the General Statutes reads as rewritten:

6 "Article 3.

7 "National Guard.

8 "Part 1.

9 "General Provisions.

10 ...

11 "Part 2.

12 "Courts-Martial.

13 "**§ 127A-47. Courts-martial for National Guard.**

14 ...

15 "**§ 127A-50.1. Military ~~judges~~, judges, State's trial counsel, and defense counsel.**

16 (a) Military Judges. – The Adjutant General shall appoint military judges to preside over
17 courts-martial of the North Carolina National Guard not in federal service. Minimum
18 requirements for appointment as a military judge ~~are~~ are as follows:

19 (1) Certification as a military judge by the Judge Advocate General of the United
20 States Army, Air Force, Navy, Marines, or Coast Guard.

21 (2) Designation as a judge advocate by the Judge Advocate General of the United
22 States Army, Navy, Air Force, Marines, or Coast Guard.

23 (3) Membership in the North Carolina National Guard, the National Guard of
24 another state, or the active or reserve components of the Armed Forces of the
25 United States.

26 (b) State's Trial Counsel; Defense Counsel. – The State's trial counsel and defense
27 counsel shall have the following qualifications:

28 (1) Designation as a judge advocate by the Judge Advocate General of the United
29 States Army, Navy, Air Force, Marines, or Coast Guard.

30 (2) Membership in the North Carolina National Guard.

31 (c) Membership in State Bar Not Required. – Notwithstanding G.S. 84-4, the military
32 judge, the State's trial counsel, and defense counsel are not required to be members of the North
33 Carolina State Bar.

34 ...

35 "**§ 127A-52. Jurisdiction of courts-martial.**



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1 (a) Subject Matter Jurisdiction. – The subject matter jurisdiction of courts-martial of the
 2 North Carolina National Guard, not in the service of the United States, shall be is as prescribed
 3 by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall
 4 be currently was in use by the Armed Forces of the United States. States at the time the offense
 5 was committed.

6 (b) Personal Jurisdiction. – ~~Such~~ The courts-martial shall have personal jurisdiction to try
 7 accused persons for offenses committed while serving without the State and while going to and
 8 returning from service without the State in like manner and to the same extent as while serving
 9 within the State over all members of the North Carolina National Guard at all times and in all
 10 places.

11 ...

12 **"§ 127A-56. Powers of courts-martial.**

13 (a) Powers of Military Judges and Summary Court Officers. – In the North Carolina
 14 National Guard, not in the service of the United States, ~~presidents of courts-martial military~~
 15 judges and summary court officers shall have the power to following powers:

16 (1) To issue warrants to arrest an accused person and to bring the person before a
 17 court for trial whenever the person has disobeyed an order in writing from the
 18 convening authority to appear before the court, court after a copy of the charge
 19 or charges having had been delivered to the accused person with the
 20 order, order.

21 (2) ~~and to~~ To issue subpoenas and subpoenas duces tecum, tecum.

22 (3) ~~and to~~ To enforce by attachment attendance of witnesses and the production
 23 of books, papers, records records, and other articles subject to a subpoena
 24 duces tecum, tecum.

25 (4) ~~and to~~ To sentence for a refusal to be sworn or to answer as provided in actions
 26 before civil courts.

27 The presiding officer ~~shall also have~~ has the power to punish for contempt occurring in the
 28 presence of the court.

29 (b) Subpoena Power of Counsel. – The State's trial counsel and defense counsel have the
 30 subpoena power listed in subdivision (a)(2) of this section.

31 ...

32 **"§ 127A-59. Sentences.**

33 When any sentence to fine or imprisonment is imposed by ~~any military court a court-martial~~
 34 of this State, it shall be the duty of the military judge, president of the court, judge or summary
 35 court officer, upon the approval of the court's findings and sentence, to shall make out enter
 36 and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the
 37 date of approval of sentence, and the terms of the sentence. The State's trial counsel shall deliver
 38 the certificate to the Clerk of the Superior Court of Wake County, and it shall thereupon be the
 39 duty of the clerk to take the actions necessary to shall carry the sentence into execution in the
 40 same manner as prescribed by law for the collection of fines, fines or commitment to service of
 41 terms of imprisonment, imprisonment in criminal cases determined in the courts of this State.
 42 The Administrative Office of the Courts shall ensure that the State's criminal history records
 43 include pertinent information relating to a court-martial under this Chapter in a like manner as a
 44 comparable offense under the State's State criminal laws law would be recorded."

45 **"§ 127A-60. Approval of sentence. Disqualification of convicted officer.**

46 ~~No sentence imposed by a special or general court-martial of the North Carolina National~~
 47 Guard, not in the service of the United States, shall be executed until approved by the Governor.
 48 Any officer convicted by a general court-martial and dismissed from the service shall be forever
 49 disqualified from holding a commission in the militia.

50 ...

51 **"§ 127A-62. Appeals; discretionary review.**

1 (a) Jurisdiction. – ~~Court martial judgments which include a sentence to confinement shall~~
 2 ~~have a right of appeal to the Wake County Superior Court. The provisions of A court-martial's~~
 3 ~~judgment or order may be appealed under this section to the Wake County Superior Court.~~
 4 ~~G.S. 15A-1451 shall apply G.S. 15A-1431(f1) applies to appeals under this section.~~

5 (b) Filing and Service. – An appeal under this section ~~must~~ shall be made in writing and
 6 filed with the Clerk of Superior Court of Wake County within 10 days after the ~~approval of the~~
 7 ~~sentence by the Governor, court-martial enters the judgment or order. A copy of the petition~~
 8 ~~appeal shall be filed with the military court and the military trial counsel of record, court-martial~~
 9 ~~and served on the opposing party. For the purposes of a filing fee, the appeal shall be treated as~~
 10 an administrative appeal to the Superior Court.

11 (c) ~~Assertion~~ Defendant's Assertion of Errors. – ~~All errors, including, but not limited to,~~
 12 ~~the following, must be asserted or shall be deemed waived. The defendant may assert the~~
 13 ~~following errors on appeal:~~

14 (1) Any error of law, including the following:

- 15 a. The court erroneously failed to dismiss the charge prior to the
- 16 court-martial.
- 17 b. The court's ruling was contrary to law with regard to motions made
- 18 before or during the trial or with regard to the admission or exclusion
- 19 of evidence.
- 20 c. The evidence, at the close of all the evidence, was insufficient to
- 21 justify submission of the case to the court-martial panel, whether or
- 22 not a motion so asserting was made before verdict.
- 23 d. The court erroneously instructed the court-martial panel.

24 (2) The verdict is contrary to the weight of the evidence.

25 (3) For any other cause, the defendant did not receive a fair and impartial trial.

26 (c1) State's Assertion of Errors. – Unless the rule against double jeopardy prohibits further
 27 prosecution, the State may assert the following errors on appeal:

28 (1) The court erroneously dismissed a charge.

29 (2) The court erroneously excluded evidence that substantially proves a material
 30 fact.

31 (c2) Interlocutory Appeal. – The defendant and the State have a right to appeal prior to
 32 trial an order admitting or excluding evidence. If the State appeals under this subsection, the
 33 State's trial counsel shall certify to the court-martial that the appeal is not taken for the purpose
 34 of delay and that the evidence is essential to the case.

35 ...

36 (h) Counsel. –

37 (1) The Staff Judge Advocate of the North Carolina National Guard ~~shall~~ shall do
 38 the following:

39 ...

40 (4) The Adjutant General, upon the recommendation of the Staff Judge Advocate,
 41 shall place the designated judge advocates described in this subsection onto
 42 State active duty for the periods of time necessary for either counsel to provide
 43 adequate representation to the respective parties, if regularly scheduled unit
 44 training periods are insufficient. The Staff Judge Advocate shall verify to the
 45 Adjutant General whether any ~~such~~ additional periods of time are necessary.

46 (i) Discretionary Review. – Review of decisions by the Wake County Superior Court
 47 ~~shall be~~ are pursuant to G.S. 7A-31.1.

48 (j) Rules. – The rules for practice and procedure for review of courts-martial by the Wake
 49 County Superior Court shall be consistent with those prescribed for review of administrative
 50 appeals by the Superior Court, except as modified by this section.

51 "**§ 127A-63. Reserved for future codification purposes.**"

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"Part 3.

"National Guard Family Assistance Centers.

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SECTION 2. This act becomes effective December 1, 2019, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.