

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

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)

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

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

4 26-101. Department of emergency and military affairs;
5 organization; adjutant general; qualifications

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

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

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

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

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

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

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

35 26-1015. Commanding officer; nonjudicial punishment

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

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

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

12 1. On officers of his command:

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

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

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

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

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

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

24 2. On other personnel of his command:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Sec. 3. Section 26-1018, Arizona Revised Statutes, is amended to read:
24 26-1018. Jurisdiction of general courts-martial

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

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

35 Sec. 4. Section 26-1020, Arizona Revised Statutes, is amended to read:
36 26-1020. Jurisdiction of summary courts-martial

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

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

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

6 Sec. 5. Section 26-1026, Arizona Revised Statutes, is amended to read:
7 26-1026. Military judge of a general or special court-martial

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

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

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

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

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