

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 1010

(Senators Peters and Bailey)

Judicial Proceedings

Judiciary

Public Safety - Maryland Code of Military Justice

This bill establishes a Maryland Code of Military Justice, which applies to all members of the State military forces at all times. It also repeals Subtitle 8 of the Public Safety Article (Courts-Martial).

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: “State military forces” means the National Guard of the State, as defined in federal law, when not in a status subjecting them to exclusive jurisdiction, as specified. “State military forces” does not include the unorganized militia, Maryland Defense Force, or any other State force that does not meet the applicable definition.

Jurisdiction and Applicability

Pursuant to the bill, subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the State military force. Courts-martial have primary jurisdiction of military offenses. A proper civilian court has primary jurisdiction of a nonmilitary offense when an act or omission violates both the bill’s provisions and

local criminal law, as specified. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense.

Each person discharged from the State military forces who is later charged with having fraudulently obtained a discharge is, subject to provisions regarding statute of limitations, subject to trial by court-martial on that charge and is, after apprehension, subject to the Code while in custody under the direction of the State military forces for that trial. On conviction of that charge, the person is subject to trial by court-martial for all offenses under the Code committed before the fraudulent discharge. No person who has deserted from the State military forces may be relieved from amenability to the jurisdiction of the Code by virtue of a separation from any later period of service.

The bill also establishes that the Code has applicability at all times and in all places, so long as either the subject person is in a duty status or, that there is a nexus between the act or omission constituting the offense and the efficient functioning of the State military forces. The grant of military jurisdiction neither precludes nor limits civilian jurisdiction over an offense, as specified.

Victims' Rights

A victim of an offense under the Code has all rights conferred by State law in nonmilitary courts, including, among others, (1) the right to be reasonably protected from the accused; (2) the right to reasonable, accurate, and timely notice provided by military trial counsel, as specified; (3) the right to be reasonably heard at specified hearings and proceedings; (4) the right to receive full restitution, as specified; and (5) the right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under the Code. The bill also specifies limitations for the applicability of the provisions, such as that the provisions may not be construed to authorize a cause of action for damages, and establishes provisions regarding appellate rights and the interviewing of alleged victims.

Apprehension and Restraint

The bill establishes the authority for authorized individuals to apprehend persons subject to specified jurisdiction on probable cause that an offense has been committed and that the person apprehended committed it. Among other items, the bill also includes provisions (1) regarding apprehensions that occur outside the State; (2) generally prohibiting the payment of fees or charges related to the apprehension or confinement, as specified; (3) authorizing an enlisted member to be ordered into arrest or confinement by a commissioned officer, as specified; (4) authorizing a person subject to the Code charged with an offense under the Code to be ordered into arrest or confinement, as circumstances require; (5) requiring immediate steps to inform the person of the specific wrong of which the person is accused, as specified; and (6) generally prohibiting the imposition of

punishment or penalty other than arrest or confinement on a person while being held for trial or awaiting a verdict, as specified.

Nonjudicial Punishment

The bill also authorizes a commanding officer or officers-in-charge to impose disciplinary punishments for minor offenses without the intervention of a court-martial, as specified, and provides for the delegation of related powers. A commanding officer may impose on enlisted members of the officer's command specified punishments, including an admonition or reprimand, a fine equal to or forfeiture of up to seven days' pay, extra duties, or the withholding of privileges for specified time periods. The bill authorizes other individuals, including commanding officers of the grade of major or above, the Governor, or the Adjutant General to impose additional punishments, as specified. The bill sets forth additional requirements regarding the determination and mitigation of punishments and establishes appellate rights and procedures.

Court-martials and Pre-trial Procedures

The bill establishes the jurisdiction and composition of general courts-martial, special courts-martial, and summary courts-martial, and specifies the types of punishment each body is authorized to adjudge. The bill also includes provisions regarding (1) how such bodies are appointed and convened; (2) who may serve on courts-martial; (3) military judges, trial counsel, and defense counsel; and (4) absent, alternate, and additional members of a general or special courts-martial.

The bill establishes pre-trial procedures, including a requirement that the proper authority, on the preferring of charges, take immediate steps to determine what disposition should be made in the interest of justice and discipline and for the person accused to be informed of the charges as soon as practicable. Among other items, the bill includes provisions that prohibit compulsory self-incrimination, require a thorough and impartial investigation, establish a right to counsel, authorize the waiver of a preliminary hearing, and specify requirements for a preliminary hearing (if not waived). The bill also requires, before directing the trial of any charge by a general court-martial, that the convening authority refer the charge to a judge advocate for consideration and advice. Related requirements regarding written and signed statements by the judge advocate and the service of charges are also included.

Trial Procedures

The Military Rules of Evidence and the Rules for Courts-Martial, as specified, must apply to the extent practical to courts-martials convened by the Maryland National Guard to the

extent they do not conflict with State substantive law. The Governor may adopt supplemental regulations to govern matters not otherwise provided for. The bill prohibits specified actions regarding a court-martial or individuals related to its work, including prohibiting a person subject to the Code from attempting to coerce a member in reaching the findings or sentence in any case. Among other provisions, it also (1) establishes the duties of trial counsel and defense counsel; (2) authorizes a military judge to call the court into session without the presence of the members for specified purposes; (3) establishes a right for the accused or trial counsel to challenge the military judge and members of a general or special court-martial for cause stated to the court; and (4) establishes requirements regarding oaths or affirmations, a statute of limitations, pleas, obtaining witnesses and evidence (including the issuance of subpoenas), contempt, and depositions.

The Code provides an affirmative defense in a trial by court-martial if, at the time of the commission of the acts, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Procedures for the defense of lack of mental responsibility are governed by the rule of use of courts-martial to the extent they do not conflict with State substantive law.

Voting by members of a general or special court-martial on the findings and on the sentence must be by secret written ballot. The bill specifies additional requirements regarding the vote and establishes that the military judge must rule on all questions of law and interlocutory questions arising during the proceedings, as specified. A court-martial must announce its findings and sentence to the parties as soon as determined.

Sentences

The bill prohibits cruel and unusual punishments and establishes maximum limits on punishments. A conviction by general court-martial of any military offense for which an accused may receive a sentence of confinement for more than one year is a felony offense. Otherwise, all other military offenses are misdemeanors. However, a conviction by a summary court-martial is not a criminal conviction. The bill also specifies provisions regarding the deferment of sentences and the execution of confinement, including the forfeiture of pay and allowances during a period of confinement or parole.

Post-trial Procedures and Review of Courts-martial

The bill establishes numerous post-trial procedures and requirements, including requiring the findings and sentence of a court-martial to be reported promptly to the convening authority after the announcement of the sentence and authorizing the accused to submit to the convening authority matters for consideration with respect to the findings and the sentence. The convening authority or other person taking action, as specified, may order a

proceeding in revision or a rehearing. The bill also sets forth additional provisions regarding the appellate rights of the accused and the State and procedures for rehearings. Furthermore, each general and special court-martial case in which there has been a finding of guilty must be reviewed by the senior force judge advocate or a designee, as specified, and sent to the Adjutant General under specified circumstances. If the senior force judge advocate or designee opines that corrective action is required as a matter of law, and the Adjutant General does not take the action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial must be sent to the Governor for review and action as deemed appropriate.

The bill also establishes the Court of Military Appeals, which has power over (1) the issuance of extraordinary writs, as specified; (2) adjudicating appeals by victims; and (3) adjudicating appeals of sentences of a court-martial that have been approved by the convening authority, as specified. Among others, provisions regarding appellate counsel, petitions for a new trial, the remissions and suspensions of sentences, and the restoration of rights, privileges, and property in specified circumstances are also set forth in the Code.

Lack of Mental Capacity or Mental Responsibility

If a person is determined to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority must commit the person to the custody of the State Attorney General. The State Attorney General must take action in accordance with State law applicable to persons incompetent to stand trial. The bill establishes additional procedures related to these circumstances, as well as to those in which a person is found by a court-martial not guilty only by reason of lack of mental responsibility.

Punitive Provisions

The bill sets forth additional provisions regarding the treatment of (1) principals and accessories after the fact; (2) convictions of lesser included offenses; (3) attempts; (4) conspiracy; and (5) soliciting commission of offenses. The bill establishes the authority of a court-martial to direct the punishment for specified offenses, including (1) malingering; (2) breach of medical quarantine; (3) desertion; (4) absence without leave; (5) missing movement or jumping from vessel; (6) resistance, flight, breach of arrest, and escape; (7) offenses against correctional custody and restriction; (8) contempt toward specified officials; (9) willfully disobeying superior commissioned officers; (10) insubordinate conduct toward warrant officers or noncommissioned officers; (11) failure to obey order or regulation; (12) cruelty and maltreatment; (13) forgery; (14) wearing unauthorized insignia, decorations, badges, ribbons, devices, or lapel buttons; and (15) drunkenness and other incapacitation offenses. The bill also includes provisions

regarding prohibited activities with military recruits or trainees by persons in position of special trust.

Selected Miscellaneous Provisions

A courts of inquiry to investigate any matter of concern to the State military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry. The bill establishes additional provisions regarding a court of inquiry.

The bill requires specified portions of the Code to be carefully explained to each enlisted member, at the time of, or within 30 days after, the member's initial entrance to a duty status with the State military forces and explained again at a specified time.

The bill's provisions must be construed so as the effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice.

A person acting under the bill's provisions, whether as a member of the military or a civilian, is immune from personal liability for any of the acts or omissions that the person did or failed to do as part of the person's duties under the Code.

On enactment, the bill supersedes all existing statutes, ordinances, directives, rules, regulations, orders, and other laws in the State covered by the subject matter of the law; all such items are repealed.

Current Law/Background: Statutory provisions regarding the State Military Department are within the Public Safety Article. Subtitle 8 includes limited provisions regarding courts-martial, offenses subject to court-martial, and authorized penalties, sentencing, immunity, and fines. However, the Military Department advises that the Maryland Code has failed to keep pace with federal law. The Uniform Military Code of Justice was originally signed into law in 1950 but has been continually updated. For example, the Military Justice Act of 2016 expanded provisions regarding plea agreements, revised punitive articles, and added protections for victims. The bill is intended to provide a comprehensive, modern system of military justice in State statute.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1139 (Delegate Wilson) - Judiciary.

Information Source(s): Baltimore City; Prince George’s County; Maryland Association of Counties; City of Bowie; Maryland Municipal League; Governor’s Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; State Prosecutor’s Office; Department of Budget and Management; Department of Public Safety and Correctional Services; Department of State Police; Military Department; Department of Legislative Services

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