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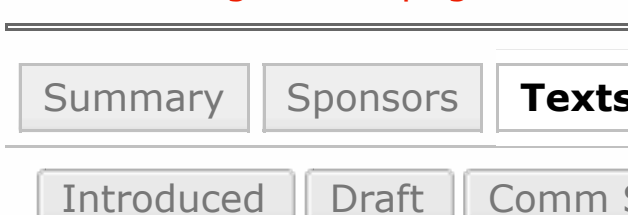
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Bill Text: SC H4642 | 2023-2024 | 125th General Assembly | Draft



South Carolina House Bill 4642

SC State Legislature page for H4642

Summary

Sponsors

Texts

Votes

Research

Comments

Track

Introduced

Draft

Comm Sub

Amended

Amended

Comm Sub

Draft

Bill Title: Military Code and Code of Military Justice revisions

Spectrum: Moderate Partisan Bill (Republican 5-1)

Status: *(Passed)* 2024-05-20 - Act No. 145 [\[H4642 Detail\]](#)

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South Carolina General Assembly	
125th Session, 2023-2024	
Bill 4642	
Indicates Matter Stricken	
Indicates New Matter	
(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)	

A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 25-1-20, RELATING TO THE ACCEPTANCE OF ACT OF CONGRESS, SO AS TO DISALLOW CONFLICTS; BY AMENDING SECTION 25-1-40, RELATING TO THE APPLICABILITY OF THE UNIFORM CODE OF MILITARY JUSTICE, SO AS TO REMOVE PROVISIONS; BY AMENDING SECTION 25-1-2420, RELATING TO THE MILITARY CODE DEFINITIONS, SO AS TO REVISE THE DEFINITION OF "MILITARY FORCES"; BY AMENDING SECTION 25-1-2430, RELATING TO PERSONS SUBJECT TO CODE OF MILITARY JUSTICE, SO AS TO PROVIDE FOR WHAT JURISDICTION DUTY STATUS INCLUDES; BY AMENDING SECTION 25-1-2520, RELATING TO NONJUDICIAL DISCIPLINARY PUNISHMENT, SO AS TO PROVIDE THAT CERTAIN PERSONS MAY NOT DECLINE NONJUDICIAL PUNISHMENT; BY AMENDING SECTION 25-1-2530, RELATING TO TYPES OF COURTS-MARTIAL, SO AS TO PROVIDE FOR WHOM A SPECIAL COURT-MARTIAL CONSISTS OF; BY AMENDING SECTION 25-1-2550, RELATING TO THE JURISDICTION OF GENERAL COURTS-MARTIAL, SO AS TO REMOVE FORFEITURE OF PAY; BY AMENDING SECTION 25-1-2570, RELATING TO THE JURISDICTION OF SUMMARY COURTS-MARTIAL, SO AS TO PROVIDE FOR PUNISHMENTS; BY AMENDING SECTION 25-1-2620, RELATING TO DETAIL AND DESIGNATION OF MILITARY JUDGES, SO AS TO PROVIDE THE AUTHORITY CONVENING A SUMMARY COURT-MARTIAL; BY AMENDING SECTION 25-1-2765, RELATING TO VOTING AND RULINGS; SO AS TO REMOVE CERTAIN REFERENCES TO THE PRESIDENT OF A COURT-MARTIAL; BY AMENDING SECTION 25-1-2780, RELATING TO RECORD OF TRIAL, SO AS TO INCLUDE THE ADJUTANT GENERAL; BY AMENDING SECTION 25-1-2795, RELATING TO FORFEITURE OF PAY, SO AS TO REMOVE THE SENTENCE OF FORFEITURE OF PAY; BY AMENDING SECTION 25-1-2805, RELATING TO THE REDUCTION IN PAY GRADE AND THE RESTORATION OF BENEFITS, SO AS TO INCLUDE THE ADJUTANT GENERAL; BY AMENDING SECTION 25-1-2865, RELATING TO THE REMISSION OR SUSPENSION OF A SENTENCE, SO AS TO REPLACE FORFEITURES WITH FINES; BY AMENDING SECTION 25-1-2985, RELATING TO THE IMPROPER USE OR DISCLOSURE OF PAROLE OR COUNTERSIGN, SO AS TO INCLUDE WHEN THE USE OF MILITARY FORCE HAS BEEN AUTHORIZED BY CERTAIN INDIVIDUALS; BY AMENDING SECTION 25-1-3140, RELATING TO WRIT WHEN FINE HAS NOT BEEN PAID, SO AS TO UPDATE DATES; BY AMENDING SECTION 25-1-3145, RELATING TO WRIT OF SENTENCE OR CONFINEMENT, SO AS TO UPDATE DATES; AND BY AMENDING SECTION 25-1-3160, RELATING TO CONSTRUCTION OF CODE OF MILITARY JUSTICE, SO AS TO PROVIDE THAT THE UNIFORM CODE OF MILITARY JUSTICE IS NOT BINDING ON THE SOUTH CAROLINA CODE OF MILITARY JUSTICE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 25-1-20 of the S.C. Code is amended to read:

Section 25-1-20. The act of Congress approved June 3, 1916, entitled "An Act Making Further and More Effectual Provisions for the National Defense and for Other Purposes" and all acts presently amendatory thereto, the future amendatory acts thereof being subject to the approval of the State legislature, is hereby accepted by this State and the provisions of said act and amendments thereto are made a part of the military code ~~so far as applicable and not in conflict with a rule or regulation established in or pursuant to this code.~~ (Ref: Titles 32 & 10, United States Code).

SECTION 2. Section 25-1-40 of the S.C. Code is amended to read:

Section 25-1-40. ~~Whenever a portion of the militia of the State is on duty under or pursuant to orders of the Governor or whenever a part of the militia is ordered to assemble for state duty, the systems, precedents, and procedures established in the Uniform Code of Military Justice for the governing of armed forces of the United States, so far as applicable and not in conflict with a rule or regulation of this code, is considered in full force and regarded as a part of this chapter until these forces are duly relieved from this duty. Nothing in this section is construed as relinquishing the state's authority and jurisdiction in these matters. The Governor shall review the findings of all general courts-martial convened during situations arising pursuant to this section. ~~Rescinded.~~~~

SECTION 3. Section 25-1-2420 9. of the S.C. Code is amended to read:

9. "Military forces" means the national guard of the State, as defined in Section 25-1-10, persons attached or assigned to state units the state guard, and any other ~~military force organized person ordered to serve or train as a member of the state's militia~~ under the laws of ~~the~~ this State;

SECTION 4. Section 25-1-2430 of the S.C. Code is amended to read:

Section 25-1-2520. 1. Under regulations that the Adjutant General may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of general officers or commanders authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon a demand. However, punishment may not be imposed upon a member of the military forces under this section if the member has, before the imposition of punishment, demanded trial by court-martial in lieu of punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized pursuant to this section. A colonel or general officer may delegate his nonjudicial punishment authority to an individual within his authority, who is no more than ~~one grade~~ two grades inferior in rank, so long as the adjudged sentence is not executed until the delegating commander has approved the procedure and sentence.

2. Subject to subsection 1 of this section, any commander may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(A) upon officers of his command:

(1) restriction to certain specified limits, with or without suspension from duty, for not more than fifteen days;

(2) if imposed by the Governor, the Adjutant General, or an officer of a general rank in command:

(a) arrest in quarters for not more than fifteen days;

(b) ~~forfeiture of pay of not more than seven days' pay~~ or a fine of not more than the equivalent of seven days' pay;

(B) upon other military personnel of his command:

(1) ~~forfeiture of pay of not more than two days' pay~~ or a fine of not more than the equivalent of two days' pay;

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

(3) extra duties, including fatigue or other duties, for not more than fourteen days;

(4) restriction to certain specified limits, with or without suspension from duty, for not more than fourteen days;

(5) if imposed by an officer of the grade of major, or above:

(a) ~~forfeiture of pay of not more than four days' pay~~ or a fine of not more than the equivalent

of four days' pay;

(b) reduction to the lowest or any intermediate pay grade, if the grade from which 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;

(c) the punishment authorized under subitem (3) of item (B) of subsection 2 of this section;

(d) the punishment authorized under subitem (4) of item (B) of subsection 2 of this section.

No two or more of the punishments of arrest in quarters, extra duties, and restriction may be combined to run consecutively in the maximum amount possible for each. Whenever any of those punishments are combined to run consecutively, there must be an appointment by regulation.

3. An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subitems (1) through (3) of item (B) of subsection 2 of this section as the Governor may specifically prescribe by regulation.

4. The officer who imposes the punishment authorized in subsection 2 of this section, or his successors in command, may at any time, suspend probationally a reduction in grade or a ~~forfeiture fine~~ imposed under subsection 2 of this section, whether or not executed. In addition, he may at any time remit or mitigate any part or amount of the unexecuted punishment and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to ~~forfeiture of pay~~ fine. When mitigating:

(a) arrest in quarters to restriction;

(b) extra duties to restriction;

the mitigated punishment may not be for a greater period than the punishment mitigated. When mitigating reduction in grade to ~~forfeiture of pay~~ fine, the amount of the ~~forfeiture fine~~ may not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

5. A person punished by this section who considers his punishment unjust or disproportionate to the offense may, through proper channel, appeal to the next superior authority. The appeal must be promptly forwarded and decided, and in the meantime the punishment adjudged must be suspended. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection 4 of this section by the officer who imposed the punishment. The authority who is to act on the appeal shall refer the case to the state judge advocate or a judge advocate or legal officer within his command for consideration and advice. The decision of the superior authority

is final.

6. 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; but the fact that a disciplinary punishment

has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

~~—3— Whenever a punishment of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing on or after the date that punishment is imposed and to any pay accrued before that date.~~

~~8-2.~~ The Adjutant general may, by regulation, 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.

SECTION 6. Section 25-1-2530 of the S.C. Code is amended to read:

Section 25-1-2530. There may be three types of courts-martial in the state military forces:

1. general court-martial, consisting of:

(a) a military judge and not less than five members; or

(b) only a military judge if, before the court is assembled, the accused, knowing the identity of the military judge, and after consultation with defense counsel, requests in writing a court composed only of a military judge, and the military judge approves;

2. special court-martial, consisting of:

~~(a) not less than three members; or~~

~~(b)(a)~~ a military judge and not less than three members; or

~~(b)~~ only a military judge, if one has been detailed to the court, and the accused under the same conditions as prescribed in item (b) of subsection 1 of this section so requests; and

3. summary court-martial, consisting of one officer ~~the state military judge, a judge advocate detailed to the court as the hearing officer, or a panel of three officers.~~

SECTION 7. Section 25-1-2550 of the S.C. Code is amended to read:

Section 25-1-2550. Subject to Section 25-1-2540, general courts-martial have jurisdiction to try persons subject to this code for an offense made punishable by the code. Under limitations the Governor may prescribe, or further limitations the Adjutant General may prescribe, a general court-martial may order any of the following:

(1) dismissal, or dishonorable or bad-conduct discharge;

(2) confinement of not more than ~~twelve months~~ ten years;

(3) a fine of not more than forty days' pay;

(4) reduction of enlisted personnel to the lowest pay grade;

~~—(5) forfeiture of pay and allowances not to exceed forty days' pay;~~

~~—(6)(5)~~ a reprimand;

~~—(7)(6)~~ any combination of these punishments.

~~—(4) forfeiture of pay and allowances not to exceed ten days' pay;~~

~~—(5)(4)~~ any combination of these punishments.

A person who upon summary courts-martial have jurisdiction may not be brought to trial before a ~~military judge, judge advocate, or an officer-only~~ summary court-martial if he objects. If objection to

trial by a military judge, judge advocate, or an officer-only summary court-martial is made by an accused, trial ~~may~~ must be ordered to proceed by ~~speci~~ special or general panel summary court-martial as ~~appropriate~~ provided in subsection 2

~~—2. Subject to Section 25-1-2540, summary courts-martial have jurisdiction to try persons subject to the code for an offense made punishable by the code. Under limitations the Governor or Adjutant General may prescribe a summary court-martial consisting of a panel of three officers may order any of the following punishments:~~

~~—(1) reduction of enlisted personnel by one pay grade, provided the grade of the accused is within the promotion authority of the convening authority;~~

~~—(2) a fine of not more than ten days' pay;~~

~~—(3) imprisonment not to exceed thirty days; or~~

~~—(4) any combination of these punishments.~~

~~—The senior officer presiding over the summary courts-martial has the exclusive authority to determine and order the punishments under this section, subject to the review of the convening authority.~~

~~—No person subject to the Code of Military Justice has the right to decline a panel summary courts-martial under this code and demand trial by either a special or general court-martial.~~

~~—3. A summary court-martial conviction is not considered a criminal conviction.~~

~~—4. A summary court-martial conviction may be used as the basis for a future administrative separation, a bar to reenlistment, or other administrative actions.~~

SECTION 10. Section 25-1-2620(1) of the S.C. Code is amended to read:

(1) The authority convening a general court-martial or a special court-martial shall; ~~and the authority convening a special court-martial may~~ (subject to the approval of the ~~adjutant general~~ adjutant general), detail a military judge to the court-martial. A military judge shall preside over each open session of the court-martial to which he has been detailed. ~~The authority convening a summary court-martial may detail either a military judge, a judge advocate, or an officer to serve as the hearing officer or a panel of three officers.~~

SECTION 11. Section 25-1-2765 of the S.C. Code is amended to read:

Section 25-1-2765. Voting by members of a general or special court-martial on the findings and on the sentence; ~~and by members of a court-martial without a military judge upon questions of challenge~~ must be by secret written ballot. The junior member of the court shall count the votes. The count must be checked by the president, who shall forthwith announce the result of the ballot to the members of the court ~~and then the military judge.~~

The military judge ~~and, except for questions of challenge, the president of a court-martial without a military judge~~ shall rule upon all questions of law and all interlocutory questions, arising during the proceedings. Any ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused; ~~or by the president of a court-martial without a military judge~~ upon any question of law other than a motion for a finding of not guilty is final and constitutes the ruling of the court. However, the military judge ~~or the president of a court-martial without a military judge~~ may change his ruling at any time during the trial.

Before a vote is taken on the findings, the military judge ~~or the president of a court-martial without a military judge~~ shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt;

(4) that the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the State.

This section does not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings, and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear in it.

SECTION 12. Section 25-1-2780 of the S.C. Code is amended to read:

Section 25-1-2780. Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record must be authenticated by the signature of the military judge. If the record may not be authenticated by the military judge by reason of his death, disability, or absence, it must be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting

of only a military judge the record must be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this paragraph. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge or confinement and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the

Governor or the Adjutant General.

A copy of the record of the proceedings of each general and special court-martial must be given to the accused as soon as it is authenticated.

Summary court-martial proceedings must use documents promulgated by regulations of the Adjutant General.

SECTION 13. Section 25-1-2795 of the S.C. Code is amended to read:

Section 25-1-2795. ~~Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.~~

Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended must be excluded in computing the service of the term of confinement.

All other sentences of courts-martial are effective on the date ordered executed.

On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the person exercising court-martial jurisdiction, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the person exercising court-martial jurisdiction.

SECTION 14. Section 25-1-2805 of the S.C. Code is amended to read:

Section 25-1-2805. Unless otherwise provided in regulations to be prescribed by the Governor or the Adjutant General, a special or general court-martial sentence of an enlisted member in a pay grade above E-2, as approved by the convening authority, that includes:

(1) a dishonorable or bad-conduct discharge; or

(2) confinement, reduces that member to pay grade E-2, effective on the date of that approval.

If the sentence of a member who is reduced in pay grade under this section is disapproved or reversed, the rights and privileges of which he was deprived because of that reduction must be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

SECTION 15. Section 25-1-2865 of the S.C. Code is amended to read:

Section 25-1-2865. The Governor or a convening authority may remit or suspend any part of amount of the unexecuted part of any sentence, including all uncollected ~~forfeitures~~ fines.

The adjutant general may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

SECTION 16. Section 25-1-2985 of the S.C. Code is amended to read:

Section 25-1-2985. Any person subject to this code who in parole or when the use of military force has been authorized by the President, Governor, or Congress, discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, may be punished as a court-martial may direct.

SECTION 17. Section 25-1-3140 of the S.C. Code is amended to read:

Section 25-1-3140. When a fine has been assessed by a court-martial against a member of the National Guard of South Carolina and the proceedings of the court have been passed upon by the reviewing authority, and such fine is unpaid, the president, in the case of a general or special court-martial, or the summary court officer, in the case of a summary court-martial, shall issue a writ in substantially the following form.

STATE OF SOUTH CAROLINA
COUNTY OF _____
To any sheriff or constable in the State, Greetings:

Whereas, _____ of _____ in the county of _____, a member of the National Guard of South Carolina, was on the ____ day of _____, A. D., 4920, tried and found guilty of _____ in violation of _____ and was by court-martial sentenced to pay a fine of \$ _____ or serve _____ days in jail.

Whereas, such fine has not been paid.

Now, Therefore, by authority of the State of South Carolina, you are hereby commanded to take the body of said _____ and commit it to the keeper of the jail in the county of _____ within such jail, who is hereby commanded to receive the body of said _____ and keep him safely until he pays the sum above mentioned, or serves _____ days provided said fine due shall be reduced proportionately with the number of days served.

Fail not but service and return make within thirty days from this date.

Dated at _____ in the county of _____ this ____ day of _____, 4920.

25 US _____

Name _____ Rank _____ Organization _____

28 _____ Court
29 _____ National Guard of South Carolina

SECTION 19. Section 25-1-3160 of the S.C. Code is amended to read:

Section 25-1-3160. The Code of Military Justice must be so construed as to effectuate its general purpose to make it uniform so far as practical with the Uniform Code of Military Justice, Chapter 47, Title 10, United States Code, and the Manual for Courts-Martial. However, the Uniform Code of Military Justice and any implementing regulations are not binding on the South Carolina Code of

Military Justice. The Uniform Code of Military Justice and any implementing regulations only may be cited as persuasive authority when not in conflict with the South Carolina Code of Military Justice or any implementing state regulations.

Moreover, the Adjutant General may establish procedures to conform state military judicial proceedings with those used in circuit courts of this State. The systems and procedures established in the Uniform Code of Military Justice for the governing of military forces, so far as applicable and not in conflict with a statute or regulation prescribed in this code, is considered in full force and regarded as a part of this chapter.

SECTION 20. This act takes effect upon approval by the Governor.

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