

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 417

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

Sponsors: Senators Daniel, Britt, and D. Davis (Primary Sponsors).

Referred to: Rules and Operations of the Senate

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. General Provisions.

9 ...

10 "Part 2. Courts-Martial.

11 "**§ 127A-47. Courts-martial for National Guard.**

12 ...

13 "**§ 127A-50.1. Military judges, judges, State's trial counsel, and defense counsel.**

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

- 17 (1) Certification as a military judge by the Judge Advocate General of the United  
18 States Army, Air Force, Navy, Marines, or Coast Guard.  
19 (2) Designation as a judge advocate by the Judge Advocate General of the United  
20 States Army, Navy, Air Force, Marines, or Coast Guard.  
21 (3) Membership in the North Carolina National Guard, the National Guard of  
22 another state, or the active or reserve components of the Armed Forces of the  
23 United States.

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

- 26 (1) Designation as a judge advocate by the Judge Advocate General of the United  
27 States Army, Navy, Air Force, Marines, or Coast Guard.  
28 (2) Membership in the North Carolina National Guard.

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

32 ...

33 "**§ 127A-52. Jurisdiction of courts-martial.**

34 (a) Subject Matter Jurisdiction. – The subject matter jurisdiction of courts-martial of the  
35 North Carolina National Guard, not in the service of the United States, shall be is as prescribed  
36 by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall



1 ~~be currently was~~ in use by the Armed Forces of the United States. States at the time the offense  
 2 was committed.

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

8 ...

9 **"§ 127A-56. Powers of courts-martial.**

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

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

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

19 (3) ~~and to~~ To enforce by attachment attendance of witnesses and the production  
 20 of books, papers, records-records, and other articles subject to a subpoena  
 21 duces tecum, tecum.

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

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

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

28 ...

29 **"§ 127A-59. Sentences.**

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

42 **"§ 127A-60. Approval of sentence. Disqualification of convicted officer.**

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

47 ...

48 **"§ 127A-62. Appeals; discretionary review.**

49 (a) Jurisdiction. – ~~Court-martial judgments which include a sentence to confinement shall~~  
 50 have a right of appeal to the Wake County Superior Court. The provisions of G.S. 15A-1451

1 ~~shall apply~~ A court-martial's judgment or order may be appealed under this section to the Wake  
 2 County Superior Court. G.S. 15A-1431(f1) applies to appeals under this section.

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

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

- 12 (1) Any error of law, including the following:
  - 13 a. The court erroneously failed to dismiss the charge prior to the
  - 14 court-martial.
  - 15 b. The court's ruling was contrary to law with regard to motions made
  - 16 before or during the trial or with regard to the admission or exclusion
  - 17 of evidence.
  - 18 c. The evidence, at the close of all the evidence, was insufficient to
  - 19 justify submission of the case to the court-martial panel, whether or
  - 20 not a motion so asserting was made before verdict.
  - 21 d. The court erroneously instructed the court-martial panel.
- 22 (2) The verdict is contrary to the weight of the evidence.
- 23 (3) For any other cause, the defendant did not receive a fair and impartial trial.

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

- 26 (1) The court erroneously dismissed a charge.
- 27 (2) The court erroneously excluded evidence that substantially proves a material  
 28 fact.

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

33 ...  
 34 (h) Counsel. –

- 35 (1) The Staff Judge Advocate of the North Carolina National Guard ~~shall~~ shall do  
 36 the following:

- 37 ...
- 38 (4) The Adjutant General, upon the recommendation of the Staff Judge Advocate,  
 39 shall place the designated judge advocates described in this subsection onto  
 40 State active duty for the periods of time necessary for either counsel to provide  
 41 adequate representation to the respective parties, if regularly scheduled unit  
 42 training periods are insufficient. The Staff Judge Advocate shall verify to the  
 43 Adjutant General whether any ~~such~~ additional periods of time are necessary.

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

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

49 **"§ 127A-63. Reserved for future codification purposes.**

50 "Part 3. National Guard Family Assistance Centers.

51 ...."

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