

RÉSUMÉ DIGEST

ACT 75 (SB 147)

2017 Regular Session

Riser

Prior law provided that the public advertising and bidding procedures will not apply to the military when leasing airport space for military purposes.

New law retains prior law and extends the exception to the leasing of military facilities and reservations when the leasing of such is for military purposes.

Prior law provided that the code applies to all members of the military forces when they are not subject to the Uniform Code of Military Justice and while in a duty status or when the member is under lawful order to be in a duty status.

New law extends the jurisdiction of the commanders to include that a court-martial or court of inquiry can be convened and held in a unit serving outside of the state, granting the court the same jurisdiction and powers of the court-martial inside of the state.

New law further adds that an offense committed outside of the state can be tried and punished either inside or outside of the state. This applies to active National Guard members when the federal convening authority declines to convene a court-martial under the Uniform Code of Military Justice.

New law provides that new law applies to all members regardless of duty status of the accused whenever there is a clear and convincing nexus between an offense and the state military force. However, when a member is in active duty status in accordance to prior law, there shall be a rebuttable presumption that subject matter jurisdiction exists.

New law retains prior law concerning courts-martial classified but new law adds authority for the accused to waive his right to a trial by members, but requires that it must be exercised prior to 45 days before the beginning of the trial on the merits in the court-martial. Once the waiver has been exercised, it cannot be revoked.

New law changes the amount of time that a commanding officer can sentence a National Guard member to confinement from one week to 30 days. New law otherwise retains prior law sentence allowances concerning summary courts-martial.

Prior law provided that a thorough and impartial investigation must be conducted as to the truth of the matter, consideration of the charges, and a recommendation of the disposition prior to any charges or specification being referred to a general court-martial for hearing.

New law changes prior law to require a preliminary hearing prior to any charges or specification being referred to a general court-martial for hearing, unless the hearing is waived by the accused.

New law also provides that the scope of the preliminary hearing will be limited to:

- (1) Determining whether there is probable cause to believe an offense has been committed and the accused committed the offense;
- (2) Determining whether the convening authority has court-martial jurisdiction over the offense and the accused;
- (3) Considering the form of the charges; and
- (4) Recommending the disposition that should be made of the case.

New law further provides a preliminary hearing will be conducted by an impartial judge advocate certified under prior law whenever practicable or, in exceptional circumstances by an impartial hearing officer who is not a judge advocate. If the hearing officer is not a judge advocate, a judge advocate certified under prior law will be available to provide legal advice to the hearing officer.

New law provides that when the judge advocate or other hearing officer is detailed to conduct the preliminary hearing, the officer will be equal to or senior in grade to military counsel. After a hearing has been conducted, a report addressing the matters will be prepared. The accused will be advised of the charges against him and of his rights and can cross-examine witnesses who testify at the preliminary hearing and present evidence relevant to the limited scope of the hearing.

New law also adds that a victim may not be required to testify at the preliminary hearing and when a victim declines to testify, and in such instances the victim will be deemed unavailable for purposes of the preliminary hearing. The presentation of evidence and examination will be limited to the matters relevant to the scope of the hearing and the hearing will be recorded and the victim may request the recording and shall have access to the recording as prescribed by the Manual for Courts-Martial.

New law adds that if evidence adduced in a preliminary hearing indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if all the following occur in that the accused:

- (1) Is present at the preliminary hearing.
- (2) Is informed of the nature of each uncharged offense considered.
- (3) Is afforded the opportunities for representation, cross-examination, and presentation.

New law defines "victim" for purposes of new law.

Prior law provided that the procedure, including modes of proof, in cases before military courts may be prescribed by the governor by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in Louisiana, but which may not be contrary to or inconsistent with the La. Code of Military Justice.

New law provides that the procedure in cases before military courts shall be the federal Rules for Courts-Martial, as published in the most recent version of the Manual for Courts-Martial, United States, except when such rules are contrary to or inconsistent with the Louisiana Code of Military Justice. Provides that the modes of proof in cases before courts-martial shall be the federal Military Rules of Evidence, as prescribed in the most recent version of the Manual for Courts-Martial, United States, except when such rules are contrary to or inconsistent with the Louisiana Code of Military Justice. Authorizes the governor or adjutant general to promulgate additional rules and regulations regarding courts-martial procedure.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 29:40, 102, 116, 120(C)(1), 132, and 136)