

2017 Regular Session

SENATE BILL NO. 147

BY SENATOR RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MILITARY AFFAIRS. Provides relative to the Louisiana National Guard. (gov sig)

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AN ACT

To amend and reenact R.S. 29:40, 102, 116, 120(C)(1), 132, and 136, relative to the Military Department; to provide for leasing for military purposes; to provide for the jurisdiction of courts-martial; to provide for the regulation of the Military Department; to provide for the composition and conduct of disciplinary proceedings of service members; to provide for administration of disciplinary hearings and actions; to provide for exceptional circumstances; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 29:40, 102, 116, 120(C)(1), 132, and 136 are hereby amended and reenacted to read as follows:

§40. Leasing ~~of airport space~~ for military purposes

The public advertising and bidding procedures governing the leasing of airport space, **military facilities, or reservations** shall not apply to the **Military** Department ~~of Military Affairs~~ of the state of Louisiana when leasing **of such** airport space, ~~at a publicly-owned airport~~ **military facilities, or reservations is** for military purposes.

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1 §102. Article 2. Persons subject to this code

2 A. This code applies to all members of the state military forces ~~when not~~
 3 ~~subject to the Uniform Code of Military Justice and while in a duty status or during~~
 4 ~~a period of time in which the member is under lawful order to be in a duty status~~ at
 5 all times and in all places. A court-martial or court of inquiry may be convened
 6 and held in a unit of the state military forces serving outside the state, and the
 7 court has the same jurisdiction and powers as if the court-martial or court of
 8 inquiry were held within the state. An offense committed outside the state may
 9 be tried and punished outside the state or within the state. For members of the
 10 state military forces on active duty service in the Army National Guard of the
 11 United States under Title 10, United States Code, this code shall apply if the
 12 federal convening authority declines to convene a court-martial under the
 13 Uniform Code of Military Justice.

14 B. ~~For purposes of Article 112a of this code, members of the state military~~
 15 ~~forces shall be considered to be in a duty status at all times during said membership.~~

16 C. ~~However, the~~ **The** processing of charges and all proceedings, including
 17 trial, may be conducted without regard to the duty status of the accused.

18 C. Subject matter jurisdiction for judicial or nonjudicial punishment
 19 exists if there is a clear and convincing nexus between an offense under this code
 20 and the state military force. When a member is in a duty status under either
 21 Title 32 of the United States Code or State Active Duty under R.S. 29:7, there
 22 shall be a rebuttal presumption that subject matter jurisdiction exists.

23 * * *

24 §116. Article 16. Courts-martial classified

25 A. The three kinds of courts-martial in the state military forces are:

26 (1) general courts-martial, consisting of:

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

28 (b) only a military judge, if before the court is assembled the accused,

29 knowing the identity of the military judge, and after consultation with defense

1 counsel, requests in writing a court composed only of a military judge and the
2 military judge approves;

3 (2)(a) special courts-martial, consisting of a military judge and not less than
4 six members; or

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

9 (3) summary courts-martial, consisting of one commissioned officer.

10 **B. A waiver of the right to a trial by members may be waived by the**
11 **accused, but such waiver shall be exercised no later than forty-five days prior**
12 **to commencement of trial on the merits in the court-martial. A waiver, once**
13 **exercised, may not be revoked by the accused.**

14 * * *

15 §120. Article 20. Summary courts-martial

16 * * *

17 C. A summary court-martial may sentence to:

18 (1) Confinement of not more than ~~one week~~ **thirty days**;

19 * * *

20 §132. Article 32. ~~Investigation~~ **Preliminary hearing**

21 A. **Preliminary Hearing Required.**

22 **(1) No charge or specification may be referred to a general court-martial for**
23 **trial until a thorough and impartial investigation of all the matters set forth therein**
24 **has been made. This investigation shall include inquiry as to the truth of the matter**
25 **set forth in the charges, consideration of the form of charges, and a recommendation**
26 **as to the disposition which should be made of the case in the interest of justice and**
27 **discipline completion of a preliminary hearing, unless such hearing is waived by**
28 **the accused.**

29 **(2) The purpose of the preliminary hearing shall be limited to the**

1 **following:**

2 **(a) determining whether there is probable cause to believe an offense has**
3 **been committed and the accused committed the offense;**

4 **(b) determining whether the convening authority has court-martial**
5 **jurisdiction over the offense and the accused;**

6 **(c) considering the form of the charges; and**

7 **(d) recommending the disposition that should be made of the case.**

8 B. ~~The accused shall be advised of the charges against him and of his right~~
9 ~~to be represented at that investigation by counsel. Upon his own request he shall be~~
10 ~~represented by civilian counsel if provided by him at his own expense or military~~
11 ~~counsel of his own selection if such counsel is reasonably available, or by counsel~~
12 ~~detailed by the officer exercising general court martial jurisdiction over the~~
13 ~~command. At that investigation full opportunity shall be given to the accused to cross~~
14 ~~examine witnesses against him if they are available and to present anything he may~~
15 ~~desire in his own behalf, either in defense or mitigation, and the investigating officer~~
16 ~~shall examine available witnesses requested by the accused. If the charges are~~
17 ~~forwarded after the investigation, they shall be accompanied by a statement of the~~
18 ~~substance of the testimony taken on both sides and a copy thereof shall be given to~~
19 ~~the accused. **Hearing officer. (1) A preliminary hearing conducted pursuant to**~~
20 **Subsection A of this Section shall be conducted by an impartial judge advocate**
21 **certified under Article 27(B) of this code whenever practicable or, in exceptional**
22 **circumstances in which the interests of justice warrant, by an impartial hearing**
23 **officer who is not a judge advocate. If the hearing officer is not a judge**
24 **advocate, a judge advocate certified under Article 27(B) shall be available to**
25 **provide legal advice to the hearing officer.**

26 **(2) Whenever practicable, the judge advocate or other hearing officer**
27 **detailed to conduct a preliminary hearing shall be equal to or senior in grade**
28 **to the military counsel detailed to represent the accused or the government at**
29 **a preliminary hearing.**

1 C. If an investigation of the subject matter of an offense has been conducted
2 before the accused is charged with the offense, and if the accused was present at the
3 investigation and afforded the opportunities for representation, cross examination,
4 and presentation prescribed in Subsection (B), no further investigation of that charge
5 is necessary under this Section unless it is demanded by the accused after he is
6 informed of the charge. A demand for further investigation entitles the accused to
7 recall witnesses for further cross examination and to offer any new evidence in his
8 own behalf. **Report of results. At the conclusion of a preliminary hearing**
9 **conducted pursuant to Subsection A of this Section, the judge advocate or other**
10 **officer that conducted the preliminary hearing shall prepare a report that**
11 **addresses the matters specified in Paragraph (2) of Subsection A and Subsection**
12 **F of this Section.**

13 D. The requirements of this Section are binding on all persons administering
14 this code but failure to follow them does not divest a military court of jurisdiction.
15 **Rights of accused and victim. (1)The accused shall be advised of the charges**
16 **against him and of his right to be represented by counsel at a preliminary**
17 **hearing conducted pursuant to Subsection A of this Section. The accused has the**
18 **right to be represented at the preliminary hearing as provided in Article 38 of**
19 **this Code and in regulations prescribed under that Article.**

20 **(2) The accused may cross-examine witnesses who testify at the**
21 **preliminary hearing and present additional evidence in defense and mitigation,**
22 **relevant to the limited purposes of the hearing, as provided for in Paragraph (4)**
23 **of this Subsection and Paragraph (2) of Subsection A.**

24 **(3) A victim may not be required to testify at a preliminary hearing. A**
25 **victim who declines to testify shall be deemed to be not available for purposes**
26 **of a preliminary hearing.**

27 **(4) The presentation of evidence and examination, including**
28 **cross-examination, of witnesses at a preliminary hearing shall be limited to the**
29 **matters relevant to the limited purpose of the hearing, as provided in Paragraph**

1 (2) of Subsection A of this Section.

2 E. Recording of preliminary hearing. A preliminary hearing under
3 Subsection A of this Section shall be recorded by a suitable recording device.
4 The victim may request the recording and shall have access to the recording as
5 prescribed by the Manual for Courts-Martial.

6 F. Effect of evidence of uncharged offense. If evidence adduced in a
7 preliminary hearing conducted pursuant to Subsection A of this Section
8 indicates that the accused committed an uncharged offense, the hearing officer
9 may consider the subject matter of that offense without the accused having first
10 been charged with the offense if the accused:

- 11 (1) is present at the preliminary hearing;
- 12 (2) is informed of the nature of each uncharged offense considered; and
- 13 (3) is afforded the opportunities for representation, cross-examination,
14 and presentation consistent with Subsection D of this Section.

15 G. Effect of violation. The requirements of this Section are binding on
16 all persons administering this Chapter, but failure to follow the requirement
17 does not constitute jurisdictional error.

18 H. Victim defined. For purposes of this Section, "victim" shall mean a
19 person who:

- 20 (1) is alleged to have suffered a direct physical, emotional, or pecuniary
21 harm as a result of the matters set forth in a charge or specification being
22 considered; and
- 23 (2) is named in one of the specifications.

24 * * *

25 §136. Article 36. ~~Governor may prescribe rules~~ Rules of procedure for
26 court-martial

27 A. ~~The procedure, including modes of proof, in cases before military courts~~
28 ~~may be prescribed by the governor by regulations which shall, so far as he considers~~
29 ~~practicable, apply the principles of law and the rules of evidence generally~~

Proposed law provides that proposed 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 present law, there shall be a rebuttable presumption that subject matter jurisdiction exists.

Proposed law retains present law concerning courts-martial classified but proposed 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.

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

Present law provides 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.

Proposed law changes present 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.

Proposed 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.

Proposed law further provides a preliminary hearing will be conducted by an impartial judge advocate certified under present 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 present law will be available to provide legal advice to the hearing officer.

Proposed 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.

Proposed 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.

Proposed 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 the accused:

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

Proposed law defines "victim" for purposes of proposed law.

Present law provides 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 Louisiana Code of Military Justice.

Proposed 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 or inconsistent with the Louisiana Code of Military Justice. Authorizes the governor or adjutant general to promulgate additional rules and regulation 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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Makes technical changes.