

Legislative Analysis



AMEND CODE OF MILITARY JUSTICE

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House Bill 4638 as enrolled

Public Act 185 of 2005

Sponsor: Rep. John Garfield

House Committee: Veterans Affairs and Homeland Security

Senate Committee: Senior Citizens and Veterans Affairs

Second Analysis (8-16-06)

BRIEF SUMMARY: The bill amends the Michigan Code of Military Justice so that it conforms to the Uniform Code of Military Justice adopted by most states.

FISCAL IMPACT: House Bill 4638 would have an indeterminate impact on state and local governments.

THE APPARENT PROBLEM:

The Michigan Military Code of Justice was created in 1980. It is a uniform code that governs the behavior of all Michigan National Guardsmen when they are "on active state duty."

The statutory Code of Justice was last changed in the early 1980s, and the Michigan Department of Military and Veterans Affairs has encouraged the legislature to update it since 2001. They argue that the current code is out of date and no longer conforms to the Uniform Code of Military Justice that governs the national guardsmen and other military personnel who serve in other states. [The Uniform Code of Military Justice was written in 1961 by the National Conference of Commissioners on Uniform State Laws, together with the American Bar Association.]

Legislation has been introduced in order to update the Code, as well as to broaden both its scope and application.

THE CONTENT OF THE BILL:

House Bill 4638 would make a large number of amendments to the Michigan Code of Military Justice. According to the Department of Military and Veterans Affairs, the amendments make the state code conform to the Uniform Code of Military Justice adopted by most other states. In general, the bill would clarify the kinds of, and reasons for, courts-martial; revise disciplinary punishments; extend the list of property crimes; prohibit the use of a controlled substance while on duty; establish "lack of mental responsibility" as a defense in a trial by court-martial; and prohibit a person from using contemptuous words against political and military leaders. In addition the bill would add six legal definitions to the code ("active service," "active state service," "apprehension," "confinement," "controlled substance," and "federal service"), and modify three existing

definitions ("judge advocate," "military," and "military judge"). A more detailed description of the key changes follows.

The scope of the code. Currently the law specifies that the code of military justice applies to all members of the Michigan National Guard. Under House Bill 4638, the code would apply more broadly -- to all members of the state military forces when not in federal services and to all other people lawfully called, ordered, drafted, transferred, or inducted into, or ordered to duty in or with the state military forces, from the date they are required by the terms of the call, order, or other directive. Those subject to the code would include all persons serving in the state military forces and all persons of the state military forces in active service.

Disciplinary punishments. Under the law, a commanding officer can impose on an officer under his or her command disciplinary punishments for a minor offense. The bill clarifies that these punishments would be possible under regulations issued pursuant to the act, retains two punishments, but eliminates one aspect of punishment described as "detention of not more than one-half of one month's pay per month for three months." Currently under the law, a commanding officer also can impose disciplinary punishments on other military personnel under his or her command. House Bill 4638 would retain those punishments, but modify one (two hours extra duty for up to 15, rather than 14, consecutive duty days). Currently the law also specifies that officers who are majors or above can impose particular punishments. House Bill 4638 would retain those punishments but clarify forfeiture of not more than 15 (rather than one-half of one month) duty days' pay; afford greater authority to reduce pay grades to brigade, wing, base, or post commanders; and allow majors or above to impose restrictions (within limits) with or without suspension from duty, for not more than 15 consecutive duty days.

Appeal unjust punishment within 45 days. Currently under the law, a person who considers the punishment received as unjust or disproportionate to the offense can, through the proper channel, appeal to the next superior authority. House Bill 4638 specifies that the appeal must be made not later than 45 days after the punishment is adjudged. Under the current law, before being informed of the disciplinary action to be taken, a person to be punished has the right to demand trial by court-martial for the offense. Under the bill, this right would be retained.

Summary courts-martial. Under the law, there are three kinds of courts-martial in the state military forces: general courts-martial (a military judge and at least five members, or the military judge alone if the accused requests it); special courts-martial (a military judge and at least three members unless the accused requests only the judge); and summary courts-martial (one commissioned officer). House Bill 4638 would retain these provisions, but specify that the summary courts-martial could consist of one commissioned officer "of field grade rank or above who is certified for that duty by the state judge advocate general."

Assistant judge advocate. The law currently specifies that the person convening a general or special court-martial must request the state judge advocate general to appoint a

military judge. House Bill 4638 would retain this provision, and specify that the state judge advocate general could appoint an assistant judge advocate to serve as a military judge, if he or she were a commissioned officer and licensed to practice law in the state, as well as certified for that duty by the state judge advocate.

Lack of mental responsibility. House Bill 4638 would add a new section of law to establish "lack of mental responsibility" as a defense in a trial by court-martial. The bill specifies that this is an affirmative defense if the accused, as a result of a severe mental disease or defect, had been unable to appreciate the nature and quality or the wrongfulness of the acts. The bill also specifies that mental disease or defect does not otherwise constitute a defense. When offering this defense, the accused has the burden of proving the defense by clear and convincing evidence. If that defense is offered, the military judge (or president of a court-martial) would be required to instruct the members of the court as to the defense of lack of mental responsibility and charge them to find the accused a) guilty; b) not guilty; or c) not guilty only by reason of lack of mental responsibility. The accused would be found not guilty by reason of lack of mental responsibility if a majority of the members of the court-martial present at the time the vote was taken determined that the defense had been established, or the military judge, alone, determined that defense had been established.

Prohibition of contemptuous words. House Bill 4638 prohibits those regulated under the act from using contemptuous words against the President, Vice President, Congress, Secretary of Defense, a secretary of a military department, the director of the Michigan Department of Military and Veterans Affairs, or the Governor or the Legislature (of this state and all others). A person found guilty of this offense would be punished in the manner a court-martial ascertained, subject to all recognized common law or constitutional immunities within the state.

Peacetime emergency or civil disturbance. The code of military justice specifies "punishment as a court-martial directs" for a number of acts committed in the presence of the enemy or while a captive of the enemy. House Bill 4638 would retain these provisions and extend them to those who commit the acts "during the performance of duty in a peacetime emergency or civil disturbance operation." The bill also would add a prohibition: willfully failing to do his or her utmost to suppress civil disturbance while engaged in an emergency response operation. Further, currently the law prohibits a captured person from securing favorable treatment without proper authority in a manner contrary to law, custom, or rule. House Bill 4638 would extend this provision to also include "regulation."

Destruction of property. The code contains a section prohibiting the sale, disposal, and destruction of military property. The bill would retain these provisions, and also prohibit a person who was on duty (or in the course of duty) from willfully or recklessly wasting, spoiling, or destroying any property that was not property of the United States or of Michigan. A person who violated this provision would be punished as a court-martial directed.

Controlled substances. The law currently specifies that a person who is found under the influence of intoxicating liquor and who is disorderly while in uniform or while on state military property will be punished as a court-martial directs. House Bill 4638 expands this provision to specify instead that a person shall not be under the influence of intoxicating liquor or a controlled substance while in uniform and on military property, or while on duty.

Larceny. House Bill 4638 would add a new provision to specify that a person who unlawfully took, obtained, or withheld from the United States, the State of Michigan, or any other state any property, money, or articles of any kind with the intent to permanently deprive the owner would be guilty of larceny, and would be punished as a court-martial directed.

False use of credit cards, etc. The code currently prohibits other behavior that is punished as a court-martial suggests, including making false or fraudulent claims, swearing false oaths, forging or counterfeiting signatures, or holding U.S. money or property. House Bill 4638 would retain all of these provisions, and also prohibit making false or fraudulent use of a credit card, telephone, telephone calling card, or other access device issued by the United States or the State of Michigan.

Bringing discredit on the armed forces. Finally, the bill prohibits a person from bringing discredit upon the armed forces of the U. S. or of the state, and specifies that a violation would be punished by a general, special, or summary court-martial, as determined by the nature and degree of the violation.

MCL 32.1002 et al

ARGUMENTS:

For:

The Michigan Code of Military Justice, which dates from 1980, is out of date, and also does not conform to the Uniform Code of Military Justice originally promulgated in 1961 and since adopted by most states. This legislation would both update and standardize Michigan's code.

For example, currently, the Code applies to all members of the Michigan National Guard while on active state duty. Under the bill, the Code would apply to all members of the state military forces, when not in federal service, from the date of their terms of call, order, or other directive. Further, the bill would set a deadline for the appeal of disciplinary punishment; revise requirements pertaining to the appointment of a military judge; allow an affirmative defense in a trial by court-martial for the accused's severe mental disease or defect; add controlled substance violations to the provisions that prohibit being under the influence of intoxicating liquor; and prohibit a person subject to the Code from using contemptuous language against various public officials. They also prohibit wasting, spoiling, or destroying certain property; unlawfully taking, obtaining, or withholding certain property or money; or falsely or fraudulently using a state- or

federally issued credit card, telephone, telephone calling card, or other access device. The bill further would allow a local law enforcement officer to apprehend a person subject to the Code. In addition, a person subject to the Code would have to be punished as directed by a court-martial for certain acts committed before or in the presence of the enemy. The bill also would include actions committed during the performance of duty in a peacetime emergency or civil disturbance.

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