

SENATE BILL NO. 147

BY SENATOR RISER

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

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AN ACT

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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.

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Be it enacted by the Legislature of Louisiana:

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

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§40. Leasing of airport space for military purposes

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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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§102. Article 2. Persons subject to this code

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A. This code applies to all members of the state military forces when not subject to the Uniform Code of Military Justice and while in a duty status or during a period of time in which the member is under lawful order to be in a duty status at all times and in all places. A court-martial or court of inquiry may be convened and held in a unit of the state military forces serving outside the state, and the court has the same jurisdiction and powers as if the court-martial or court of inquiry were held within the state. An offense committed outside the state may

1 be tried and punished outside the state or within the state. For members of the
2 state military forces on active duty service in the Army National Guard of the
3 United States under Title 10, United States Code, this code shall apply if the
4 federal convening authority declines to convene a court-martial under the
5 Uniform Code of Military Justice.

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

8 C. However, the The processing of charges and all proceedings, including
9 trial, may be conducted without regard to the duty status of the accused.

10 C. Subject matter jurisdiction for judicial or nonjudicial punishment
11 exists if there is a clear and convincing nexus between an offense under this code
12 and the state military force. When a member is in a duty status under either
13 Title 32 of the United States Code or state active duty under R.S. 29:7, there
14 shall be a rebuttable presumption that subject matter jurisdiction exists.

15 * * *

16 §116. Article 16. Courts-martial classified

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

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

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

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

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

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

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

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

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6 §120. Article 20. Summary courts-martial

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

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

10 * * *

11 §132. Article 32. Investigation Preliminary hearing

12 A. Preliminary Hearing Required.

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

20 (2) The purpose of the preliminary hearing shall be limited to the
21 following:

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

24 (b) determining whether the convening authority has court-martial
25 jurisdiction over the offense and the accused;

26 (c) considering the form of the charges; and

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

28 B. The accused shall be advised of the charges against him and of his right
29 to be represented at that investigation by counsel. Upon his own request he shall be
30 represented by civilian counsel if provided by him at his own expense or military

counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation , they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused. Hearing officer. (1) A preliminary hearing conducted pursuant to Subsection A of this Section shall be conducted by an impartial judge advocate certified under Article 27(B) of this code whenever practicable or, in exceptional circumstances in which the interests of justice warrant, 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 Article 27(B) shall be available to provide legal advice to the hearing officer.

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

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

1 Section.

2 D. The requirements of this Section are binding on all persons administering
3 this code but failure to follow them does not divest a military court of jurisdiction.

4 Rights of accused and victim. (1)The accused shall be advised of the charges
5 against him and of his right to be represented by counsel at a preliminary
6 hearing conducted pursuant to Subsection A of this Section. The accused has the
7 right to be represented at the preliminary hearing as provided in Article 38 of
8 this Code and in regulations prescribed under that Article.

9 (2) The accused may cross-examine witnesses who testify at the
10 preliminary hearing and present additional evidence in defense and mitigation,
11 relevant to the limited purposes of the hearing, as provided for in Paragraph (4)
12 of this Subsection and Paragraph (A)(2) of this Section.

13 (3) A victim may not be required to testify at a preliminary hearing. A
14 victim who declines to testify shall be deemed to be not available for purposes
15 of a preliminary hearing.

16 (4) The presentation of evidence and examination, including
17 cross-examination, of witnesses at a preliminary hearing shall be limited to the
18 matters relevant to the limited purpose of the hearing, as provided in Paragraph
19 (A)(2) of this Section.

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

24 F. Effect of evidence of uncharged offense. If evidence adduced in a
25 preliminary hearing conducted pursuant to Subsection A of this Section
26 indicates that the accused committed an uncharged offense, the hearing officer
27 may consider the subject matter of that offense without the accused having first
28 been charged with the offense if all of the following occur in that the accused:

29 (1) Is present at the preliminary hearing.

30 (2) Is informed of the nature of each uncharged offense considered.

1 (3) Is afforded the opportunities for representation, cross-examination,
2 and presentation consistent with Subsection D of this Section.

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

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

8 (1) is alleged to have suffered a direct physical, emotional, or pecuniary
9 harm as a result of the matters set forth in a charge or specification being
10 considered; and

11 (2) is named in one of the specifications.

12 * * *

13 §136. Article 36. Governor may prescribe rules Rules of procedure for
14 court-martial

15 A. The procedure, ~~including modes of proof~~, in cases before military courts
16 may be prescribed by the governor by regulations which shall, so far as he considers
17 practicable, apply the principles of law and the rules of evidence generally
18 recognized in the trial of criminal cases in this state, but which may not be shall be
19 the federal Rules for Courts-Martial, as published in the most recent version of
20 the Manual for Courts-Martial, United States, except when such rules are
21 contrary to or inconsistent with this code.

22 B. The modes of proof in cases before courts-martial under this code
23 shall be the federal Military Rules of Evidence, as prescribed in the most recent
24 version of the Manual for Courts-Martial, United States, except when such rules
25 are contrary to or inconsistent with this code.

26 C. The governor or adjutant general may promulgate additional rules
27 and regulations regarding courts-martial procedure. All rules and regulations
28 made under this Section shall be uniform insofar as practicable.

29 Section 2. This Act shall become effective upon signature by the governor or, if not
30 signed by the governor, upon expiration of the time for bills to become law without signature

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1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____