

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1318

By: Representatives House, Burch

By: Senator T. Garner

## For An Act To Be Entitled

AN ACT TO AMEND THE MILITARY CODE OF ARKANSAS; TO  
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE MILITARY CODE OF ARKANSAS;  
AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 12-60-102, is amended to add additional subsections to read as follows:

(19) "Duty status" means the time from the date when a person is required by the terms of a call or order to obey the call or order and includes any of the following periods:

(A) Travel to and from a training site or duty station;

(B) Intervals between consecutive periods of inactive duty training on the same day;

(C) Intervals between inactive duty training on consecutive days; or

(D) The entire day that inactive duty training is performed; and

(20) "Extramarital conduct" means any of the following acts engaged in by two (2) persons of the same or opposite sex:

(A) Genital-to-genital sexual intercourse;

(B) Oral-to-genital sexual contact;

(C) Anal-to-genital sexual contact; or



(D) Oral to anal sexual contact;

SECTION 2. Arkansas Code § 12-60-103 is amended to read as follows:  
12-60-103. Persons subject to the code.

The following persons who are not in federal service are subject to this code:

- (1) Members of the organized militia.
- (2) All other persons lawfully ordered to a duty status in or with the organized militia, including the Army National Guard, Air National Guard, the Arkansas Guard, and all persons ordered to a duty status in or with any of the foregoing from the dates they are required by the terms of the order or other directive to obey the code.

SECTION 3. Arkansas Code § 12-62-302(b), concerning pay and allowances for service on boards, commissions, and courts, is amended to read as follows:

- (b) The pay shall be the same as for officers and enlisted personnel of the armed forces of the United States of equal grade, rating, and length of service, ~~or at a flat daily rate of forty dollars (\$40.00) for each day of twenty-four (24) hours or less actually spent on active duty, whichever is greater.~~

SECTION 4. Arkansas Code § 12-64-102(a), concerning the military justice jurisdiction to try certain personnel, is amended to read as follows:

- (a) Jurisdiction of courts-martial shall be coextensive with the jurisdiction provided for similar courts of the United States Army and United States Air Force while accounting for the differences in the types of duty status of members of the organized militia.

SECTION 5. Arkansas Code § 12-64-401 is amended to read as follows:  
12-64-401. Classifications of courts-martial.

There shall be three (3) kinds of courts-martial in each of the forces of the organized militia, namely:

- (1) General courts-martial, which shall consist of:
  - (A) A military judge and;
    - (i) any Any number of members not less than ~~five (5)~~

eight (8); or

(ii) Six (6) or seven (7) members if after impanelment as required by subdivision (1)(A)(i) of this section there are challenges or excusals; or

(B) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) Special courts-martial, consisting of:

(A) ~~Any number of members not less than three (3); or~~

~~(B)~~ A military judge and not less than ~~three (3)~~ four (4) members; or

~~(C)~~(B) Only a military judge, if one has been detailed to the court, and the accused, under the conditions prescribed in subdivision (1)(B) of this section, so requests, or if referred by the convening authority under the United States Uniform Code of Military Justice, 10 U.S.C. § 801 et seq., subject to applicable limitations; and

(3) Summary courts-martial which shall consist of one (1) officer.

SECTION 6. Arkansas Code § 12-64-402(a), concerning court-martial jurisdiction, is amended to read as follows:

(a) Each force of the organized militia has court-martial jurisdiction and powers over all persons subject to this code and shall follow the forms and procedures provided for similar courts of the United States Army and United States Air Force unless specifically enumerated in the Arkansas Code or by the Governor as the chief executive officer and Commander-in-Chief of the organized militia.

SECTION 7. Arkansas Code § 12-64-403 is amended to read as follows:

12-64-403. General courts-martial punishments.

General courts-martial may, under such limitations as the Governor may prescribe, adjudge one (1) or more of the following punishments for each specification:

(1) ~~A fine or forfeiture in an amount that shall not exceed two hundred (200) days of the service member's base pay and allowances~~  
Confinement with hard labor that shall not exceed the lowest sentence

limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or three hundred sixty-five (365) days;

~~(2) Confinement with hard labor for not more than two hundred (200) days~~ A fine or forfeiture in an amount that shall not exceed the lowest sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or three hundred sixty-five (365) days of the service member's base pay and allowances;

- (3) Dishonorable discharge, bad conduct discharge, or dismissal;
- (4) Reprimand; and
- (5) Reduction of enlisted persons to a lower grade.

SECTION 8. Arkansas Code § 12-64-404 is amended to read as follows:

12-64-404. Special courts-martial punishments.

A special court-martial may, under such limitations as the Governor may prescribe, adjudge one (1) or more of the following punishments:

~~(1) Confinement with hard labor for not more than one hundred (100)~~ that shall not exceed the lowest of the sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or one hundred eighty (180) days;

~~(2) A fine or forfeiture of pay and allowances in an amount that shall not exceed one hundred (100)~~ the lowest of the sentence limitations established in the Manual for Courts-Martial, United States (2019 Edition), as it existed on January 1, 2019, for the offense or one hundred eighty (180) days of the service member's base pay and allowances;

- (3) Bad conduct discharge;
- (4) Reprimand; and
- (5) Reduction of enlisted persons to a lower grade.

SECTION 9. Arkansas Code § 12-64-405(c), concerning summary courts-martial punishments, is amended to read as follows:

(c) A summary court-martial may, under such limitations as the Governor may prescribe, adjudge one (1) or more of the following punishments:

- (1) Confinement with hard labor not exceeding ~~twenty-five (25)~~

thirty (30) days;

(2) A fine or forfeiture of pay and allowances in an amount that shall not exceed ~~one hundred (100)~~ thirty (30) days of the service member's base pay and allowances;

(3) Reprimand; and

(4) Reduction of enlisted persons to a lower grade.

SECTION 10. Arkansas Code § 12-64-407(c)(1)(A), concerning service on courts-martial trial, is amended to read as follows:

(c)(1)(A) Any enlisted member of the organized militia ~~who is not a member of the same unit as the accused~~ is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but he or she shall serve as a member of a court only if before the convening of the court the accused personally has requested in writing that enlisted members serve on it.

SECTION 11. Arkansas Code § 12-64-410(c), concerning trial and defense counsel, is amended to add an additional subsection to read as follows:

(c)(1) If a victim of a crime committed subject to this code has a special victims' counsel provided at the expense of an appropriate government agency, the special victims' counsel shall be afforded all of the rights and privileges offered to counsel at similar courts of the United States Army and the United States Air Force.

(2) A judge advocate certified to practice before military courts is fully certified and qualified to serve as a special victims' counsel for the courts convened under this code, without regard to the judge advocate's licensing state.

(3) Any counsel furnished at the expense of the United States Government or the state government shall be qualified to serve as a special victims' counsel under this section and, if qualified, shall be exempt from any fees or additional requirements.

SECTION 12. Arkansas Code § 12-64-411, concerning court reporters and interpreters, is amended to add an additional subsection to read as follows:

(c) Under like regulations, the convening authority of a general or special court-martial shall detail a military court clerk who shall serve in

that role in any appeal prescribed by § 12-64-714.

SECTION 13. Arkansas Code § 12-64-414(b) and (c), concerning courts-martial absent and additional members, are amended to read as follows:

(b)(1) Whenever a general court-martial is reduced below ~~five (5)~~ six (6) members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than ~~five (5)~~ six (6) members.

(2) When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the military judge, the accused, and the counsel.

(c)(1) Whenever a special court-martial is reduced below ~~three (3)~~ four (4) members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than ~~three (3)~~ four (4) members.

(2) When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

SECTION 14. Arkansas Code § 12-64-504 is amended to read as follows:  
12-64-504. Investigation.

~~(a)(1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made.~~

~~(2) This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.~~

~~(b)(1) The accused shall be advised of the charges against him or her and of his or her right to be represented at that investigation by counsel.~~

~~(2) Upon his or her own request, he or she shall be represented by civilian counsel if provided by him or her or military counsel of his or her own selection if such counsel is reasonably available or by counsel detailed by the officer exercising general court-martial jurisdiction over~~

~~the command.~~

~~(3) At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything he or she may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused.~~

~~(c) 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.~~

~~(d)(1) 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) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after he or she is informed of the charge.~~

~~(2) A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.~~

~~(e) The requirements of this section are binding on all persons administering this code, but failure to follow them does not divest a military court of jurisdiction.~~

(a) A preliminary hearing shall be held in accordance with 10 U.S.C. § 832 et seq., as it existed on January 1, 2019, before the referral of charges and specifications for trial by general court-martial.

(b)(1) Under regulations prescribed by the Governor, a preliminary hearing is not required if the accused submits a written waiver of the preliminary hearing to the convening authority and the convening authority grants the waiver.

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

(A) Whether or not the specification alleges an offense under this chapter;

(B) Whether or not there is probable cause to believe that the accused committed the offense charged;

(C) Whether or not the convening authority has court-

martial jurisdiction over the accused and over the offense; and

(D) A recommendation as to the disposition that should be made of the case.

(3) The rights of the accused and the rights of the victim shall be the same as provided under 10 U.S.C § 832 et seq., as it existed on January 1, 2019.

SECTION 15. Arkansas Code § 12-64-507(a), concerning service of charges for a court-martial, is amended to read as follows:

(a) The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused, or the defense counsel, a copy of the charges upon which trial is to be held.

SECTION 16. Arkansas Code § 12-64-508 is amended to read as follows:  
12-64-508. Procedural rules.

The procedures used by general, special, and summary courts-martial shall be ~~the same~~ similar as to those established by the United States Congress for similar courts of the United States Army and United States Air Force; however, the Governor has executive authority over the military courts of the organized militia and may implement state-specific procedural rules when necessary and practical.

SECTION 17. Arkansas Code § 12-64-523 is amended to read as follows:  
12-64-523. Convictions, sentences, etc. – Number of votes required.

(a) No person may be convicted of an offense except by the concurrence of ~~two-thirds (2/3)~~ three-fourths ( $\frac{3}{4}$ ) of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of ~~two-thirds (2/3)~~ three-fourths ( $\frac{3}{4}$ ) of the members present at the time that the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote.

(d)(1) A tie vote on a challenge disqualifies the member challenged.

(2) A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused.

(3) A tie vote on any other question is a determination in favor of the accused.

SECTION 18. Arkansas Code § 12-64-524 is amended to read as follows:  
12-64-524. Announcement of action.

~~A court-martial shall announce its findings and sentence to the parties as soon as determined~~

(a) In all trials, the court-martial shall announce a finding for each charge and specification that is not dismissed or withdrawn by the prosecution to the parties as soon as the findings are determined.

(b) In all trials before members, the court-martial shall announce a single sentence as to confinement, fines or forfeitures, discharge or dismissal, and reprimand and reduction in rank for all charges and specifications for which the accused was found guilty.

(c) In all trials before a judge alone, the court-martial shall announce a separate sentence as to confinement, fines or forfeitures, discharge or dismissal, and reprimand and reduction in rank for each charge and specification for which the accused was found guilty.

SECTION 19. Arkansas Code § 12-64-714(c), concerning appeals, is amended to read as follows:

(c) The record of any court-martial conviction and sentence appealed shall be lodged in the office of the clerk of the court within the time prescribed by law or court rule for filing an appeal of a criminal conviction in a circuit court in this state, and not thereafter, and only after the party appealing has paid to the Adjutant General the costs for preparation of the certified transcripts and to the military court clerk the filing costs, except for paupers as provided for by the appellate court rules.

SECTION 20. Arkansas Code § 12-64-814 is amended to read as follows:  
12-64-814. Assault generally.

~~Any A person subject to this code who attempts, or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated is guilty of assault and shall be punished as a court-martial may direct~~ shall be punished as a court-martial may direct if he or she unlawfully and with force or violence:

- (1) Attempts to do bodily harm to another person;
- (2) Offers to do bodily harm to another person; or
- (3) Does bodily harm to another person.

SECTION 21. Arkansas Code § 12-64-848 is amended to read as follows:  
12-64-848. Adultery.

~~A married person subject to this code who has sexual conduct with a person not his or her spouse under circumstances that prejudice good order and discipline may be punished as a court-martial may direct~~

A person subject to this code shall be punished as a court-martial directs if:

- (1) He or she wrongfully engages in extramarital conduct with another person;
- (2) At the time the extramarital conduct occurs he or she is married to someone else or knows that the other person is married to someone else; and
- (3) Under the circumstances, his or her conduct is to the prejudice of good order and discipline required by a member of the United States Armed Forces or is of a nature that brings discredit upon the United States Armed Forces.

SECTION 22. Arkansas Code Title 12, Chapter 64, Subchapter 8, is amended to add additional sections to read as follows:

12-64-849. Retaliation.

A person subject to this code shall be punished as a court-martial may direct if he or she, with the intent to retaliate against a person for reporting or planning to report a criminal offense, or with the intent to discourage any person from reporting a criminal offense:

- (1) Wrongfully takes or threatens to take adverse personnel action against any person; or
- (2) Wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person.

12-64-850. Fraudulent use of credit cards, debit cards, and other access devices.

A person subject to this code shall be punished as a court-martial may

direct if the person knowingly and with the intent to defraud obtains anything of value using a:

- (1) Stolen credit card, debit card, or other access device;
- (2) Revoked, canceled, or otherwise invalid credit card, debit card, or other access device; or
- (3) Credit card, debit card, or other access device without the authorization of the person authorized to use the credit card, debit card, or other access device.

12-64-851. Prohibited activities by person in position of special trust.

(a) An officer, a noncommissioned officer, or a petty officer shall be punished as a court-martial may direct for abuse of a training leadership position if he or she:

- (1) Is in a training leadership position with respect to a specially protected junior member of the armed forces; and
- (2) Engages in prohibited sexual activity with the specially protected junior member of the armed forces.

(b) A military recruiter shall be punished as a court-martial may direct for abuse of a position as a military recruiter if he or she engages in prohibited sexual activity with:

- (1) An applicant he or she is recruiting to enlist in military service; or
- (2) A specially protected junior member of the armed forces who enlisted under a delayed entry program.

(c) Consent is not a defense for any prohibited conduct at issue in a prosecution under this section.

SECTION 23. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the removal of officers who are substandard in performance of duty or in conduct, deficient in character, or unsuited for military service is of paramount importance to the good order and discipline of the Arkansas National Guard and security of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.