

- SUBJECT:** Modifying certain provisions in Texas Code of Military Justice
- COMMITTEE:** Defense and Veterans' Affairs — favorable, without amendment
- VOTE:** 6 ayes — Corte, Vaught, Chavez, Farias, Pickett, C. Turner
0 nays
3 absent — Edwards, Maldonado, Ortiz
- WITNESSES:** None
- BACKGROUND:** The Texas Code of Military Justice governs enlisted members in the state military services. The code governs certain conduct of enlisted members and prescribes various punishments for offenses. Types of punishments include those determined by courts-martial, as well as nonjudicial disciplinary punishments determined by commanding officers.
- DIGEST:** HB 1165 would amend and remove various provisions of the Texas Code of Military Justice relating to nonjudicial punishment, courts-martial, and definitions of certain terms.
- Authority to impose nonjudicial punishments.** HB 1165 would transfer the authority to regulate the imposition of nonjudicial disciplinary punishment from the governor to the adjutant general. It specifically would authorize any commanding officer to impose nonjudicial punishment upon an enlisted member of state military forces for an offense.
- The adjutant general or an officer of flag rank in command could delegate the powers related to the imposition of nonjudicial punishment to a principal assistant who was a member of state military forces.
- The bill would require that any nonjudicial punishment be measured in terms of calendar days.
- A commanding officer could not impose nonjudicial punishment upon an enlisted member if the member demanded trial by court-martial. HB 1165 would remove an exception under current law that allows nonjudicial

punishment of a member attached to or embarked in a vessel even when the member had demanded trial by court-martial.

Consultation with defense counsel. HB 1165 would require that any person that faced nonjudicial punishment be afforded the opportunity to consult with qualified defense counsel if counsel was reasonably available. This would alter existing law, which provides that a person be afforded the opportunity to be represented by defense counsel.

Authorized nonjudicial punishments. HB 1165 would modify the range of available nonjudicial punishments for particular kinds of offenses. The authority of a commanding officer to impose certain nonjudicial punishments would be contingent upon the commanding officer's rank.

A commanding officer could impose the following nonjudicial punishments upon an enlisted member under the officer's command:

- a reprimand;
- a fine ranging from two to four days pay, based on the enlisted member's grade and the commanding officer's grade;
- restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, up from 30 days under existing law; or
- a reduction in the enlisted member's pay grade based on the enlisted member's grade and the commanding officer's grade.

The bill also would authorize the governor, the adjutant general, a component commander, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command to impose similar nonjudicial punishments upon enlisted members in pay grades of E-7 to E-9 and upon officers of inferior rank to the officer imposing the punishment.

Appeal from nonjudicial punishment. If a person who received nonjudicial punishment wished to appeal the punishment, that person would have to appeal to the next superior authority within 15 days after the punishment was announced or sent to the person, as determined by the person's commander. The authority hearing the appeal would have to refer an appealed case to a judge advocate, rather than any legal officer of the Texas military forces as under existing law.

Not a bar to trial by a civilian court. HB 1165 would specify that the imposition of nonjudicial disciplinary punishment did not prevent a trial by a civilian court for a serious crime or offense that resulted from the same act or omission that served as the basis for the nonjudicial punishment.

Courts-martial. HB 1165 would grant the Texas Army Guard and the Texas Air Guard court-martial jurisdiction over all enlisted members subject to the Texas Code of Military Justice.

HB 1165 would increase from \$1,000 to \$10,000 the maximum fine a general court-martial could impose and would extend the maximum period of confinement from 360 days to five years.

The bill would prohibit trial counsel and defense counsel for a general court-martial from being under the supervision or command of the other, but would allow an accused to waive this provision.

HB 1165 would increase from \$500 to \$4,000 the maximum fine a special court-martial could impose and would extend the maximum period of confinement for a single offense from 180 days to one year.

HB 1165 would increase from \$200 to \$1,000 the maximum fine a summary court-martial could impose and would extend the maximum period of confinement from 90 days to 180 days.

The bill would prohibit any witness in a case from serving on or acting as a military judge of a court-martial in the same case.

Miscellaneous provisions. HB 1165 would prohibit the consideration of an enlisted member's performance as a witness in a court-martial in determining the member's qualification for grade advancement, assignment or transfer, or retainment.

The bill would require that an enlisted member receive a careful explanation of the entire Texas Code of Military Justice, rather than certain provisions under current law, not later than the 30th day after the date of the member's enlistment, transfer, or induction to his duties with state military forces.

HB 1165 would define “day,” “duty,” and “state military forces” and redefine “commanding officer,” “officer,” and “unit.”

Effective date. The bill would take effect September 1, 2009, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 1165 would update and clarify the Texas Code of Military Justice to better reflect the federal Uniform Code of Military Justice. Since the attacks of September 11 and the aftermath of Hurricanes Gustav, Dolly, Rita, and Ike, Texas’ military forces have assumed a more active role in preparing for domestic disaster situations. Many provisions of the code need modernization to keep up with the current requirements and practices of the Texas National Guard.

Complaints that HB 1165 would raise court-martial penalties too high and sway enlisted members from disobeying illegal or unconscionable orders miss the point. An enlisted member cannot be punished for disobeying an illegal or unconscionable order because the order itself would constitute an offense. Furthermore, the proposed penalties are in line with federal court-martial penalties for similar offenses. Texas seldom has courts-martial—between none and two per year, according to the state judge advocate general of Texas. If, however, a court-martial should become necessary, the level of punishment for an offense should at least serve as a deterrent for future potential offenders, especially given the important role Texas National Guard units play in protecting the state from disasters resulting from natural events or terrorist attacks.

**OPPONENTS
SAY:**

HB 1165 would impose among the highest court-martial penalties in the nation. Given the wide range of offenses for which an enlisted member may be punished— including “using contemptuous words against the governor” and “conduct unbecoming an officer and a gentleman”— the new penalties could result in harsh fines or confinement for relatively mild offenses. The bill also could prevent enlisted members from disobeying illegal or unconscionable orders out of fear of punishment.