

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1766
By: Rodriguez
Veteran Affairs & Military Installations
4/8/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1766 will update the Texas Code of Military Justice (TCMJ) to comply with the federally enacted Uniform Code of Military Justice (UCMJ), synchronizing standards of procedural and substantive criminal laws. These changes will eliminate current inconsistencies between state and federal laws, as well as clearly define non-judicial punishment (NJP) authority and Court-Martial Punishment options.

C.S.S.B. 1766 will add definitions and update descriptions of the statute, improving ease of use and practice of the code for the Texas Military Forces.

C.S.S.B. 1766 amends current law relating to the Texas Code of Military Justice.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the governor is modified in SECTION 3 (Section 432.021, Government Code, redesignated as Section 432.015, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 432.001, Government Code, to redefine "commanding officer," "officer," "officer candidate," and "state military forces," and to define "day" and "duty."

SECTION 2. Amends Section 432.002, Government Code, to provide that this chapter applies to all members of the state military forces who are not in federal service under Title 10, United States Code.

SECTION 3. Amends Subchapters B and C, Chapter 432, Government Code, as follows:

SUBCHAPTER B. New heading: APPREHENSION AND RESTRAINT; NONJUDICIAL PUNISHMENT

Sec. 432.008. APPREHENSION. Redesignates existing Section 432.011 as Section 432.008. Makes no further changes.

Sec. 432.009. APPREHENSION OF DESERTERS. Redesignates existing Section 432.012 as Section 432.009. Makes no further changes.

Sec. 432.010. IMPOSITION OF RESTRAINT. Redesignates existing Section 432.013 as Section 432.010. (a) Makes no changes to this subsection.

(b) Replaces references to "his" with "the officer's."

(c) Replaces references to "he" with "the person."

Sec. 432.011. RESTRAINT OF PERSONS CHARGED WITH OFFENSES. Redesignates existing Section 432.014 as Section 432.011. Requires that a person confined other than in a guardhouse, whether before, during, or after trial by a military, to

be confined in a civilian, rather than civil, jail. Replaces references to "him" with "the person." Makes conforming changes.

Sec. 432.012. REPORTS AND RECEIVING OF PRISONERS. Redesignates existing Section 432.015 as Section 432.012. (a) Prohibits a provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail designated under Section 432.011, rather than Section 432.014, from refusing to receive or keep a prisoner committed to the person's charge, when the committing person furnishes a statement, signed by the committing person, rather than him, of the offense charged against the prisoner. Makes conforming changes.

(b) Requires a commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail designated under Section 432.011, rather than Section 432.014, to whose charge a prisoner is committed to, within 24 hours after the commitment or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, rather than against him, and the name of the person who ordered or authorized the commitment. Makes conforming changes.

Sec. 432.013. PUNISHMENT PROHIBITED BEFORE TRIAL. Redesignates existing Section 432.016 as Section 432.013. Makes no further changes.

Sec. 432.014. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES. Redesignates existing Section 432.017 as Section 432.014. Makes no further changes.

Deletes existing heading to Subchapter C (Nonjudicial Punishment).

Sec. 432.015. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT. Redesignates existing Section 432.021 as Section 432.015. (a) Authorizes any commanding officer, under regulations as may be prescribed, to impose disciplinary punishments for minor offenses without the intervention of a court-martial in accordance with this subchapter. Provides that there is no right to trial by court-martial in lieu of nonjudicial punishment imposed under this section. Authorizes only the governor, the adjutant general, or an officer of a general or flag rank in command to delegate the powers under this section to a principal assistant who is a member of the state military forces.

Deletes existing text authorizing the governor to prescribe, under regulations, limitations placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred on such a demand; prohibits, however, except in the case of a member attached to or embarked in a vessel, punishment from being imposed on a member of the state military forces under this section if the member, before the imposition of the punishment, has demanded trial by court-martial in lieu of the punishment; authorizes that under similar regulations, rules to be prescribed with respect to the suspension of punishments authorized by this section; authorizes the governor or an officer of general rank in command, if authorized by regulations of the governor, to delegate the governor's or officer's powers under this section to a principal assistant; and requires the accused, if disciplinary punishment other than admonition or reprimand is to be imposed, to be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 432.046(b), if such a counsel is available.

(b) Creates this subsection from existing text. Requires that any accused person who is facing discipline under this section to be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 432.046(b) (relating to requirements for a trial counsel or defense counsel for a general-court martial), if such counsel is reasonable available. Requires that the accused, otherwise, be afforded the opportunity to be represented by any available

commissioned officer of the accused's choice. Authorizes that the accused also be represented by civilian counsel at no expense to the state, rather than authorizes the accused to employ civilian counsel of his own choosing at his own expense.

(c) Redesignates existing Subsection (b) as Subsection (c). Authorizes any commanding officer to impose on enlisted members in the officer's command a reprimand, a fine equal to an amount that is not more than seven days' pay, and a reduction to the next inferior pay grade.

Deletes existing text of Subsection (b) authorizing a commanding officer, subject to Subsection (a), to, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial on officers of his command restriction to certain specified limits with or without suspension from duty, for not more than 30 days; or if imposed by the governor, or an officer of general rank in command arrest in quarters for not more than 30 days, forfeiture of not more than half of one month's pay a month for two months or a fine of not more than \$75; any restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, or detention of not more than half of one month's pay a month for three months; and on other personnel of his command; if imposed on a person attached to or embarked in a vessel, confinement for not more than three days, correctional custody for not more than seven days, forfeiture of not more than seven days' pay or a fine of not more than \$50, reduction of not more than two pay grades, if imposed by a commanding officer colonel or above, or reduction of not more than one pay grade, if imposed by a commanding officer of a grade lower than colonel; extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than two hours a day, holidays included; restriction to certain specified limits, with or without suspension from duty for not more than 14 days; detention of not more than 14 days' pay; or if imposed by an officer of the grade of major or above, the punishment authorized under Subsection (b)(2)(A), correctional custody for not more than 30 days, forfeiture of not more than half of one month's pay a month for two months or a fine of not more than \$100; reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades; extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than two hours a day, holidays included; and restriction to certain specified limits with or without suspension from duty, for not more than 60 days, or detention of not more than half of one month's pay a month for three months. Makes nonsubstantive changes.

(d) Creates this subsection from existing text. Authorizes any commanding officer of the grade of O-4 or above to impose on enlisted members in the officer's command a reprimand, a fine equal to an amount that is not more than one month's pay, and a reduction to the lowest or any intermediate pay grade, but an enlisted member in a pay grade above E-4 is prohibited from being reduced more than two pay grades.

Deletes existing Subsection (c) requiring detention of pay to be for a stated period of not more than one year, but if the offender's term of service expires earlier, the detention shall terminate on that expiration; authorizes that no two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction be combined to run consecutively in the maximum amount impossible for each; requires that if any of those punishments are combined to run consecutively, there be an apportionment; prohibits, in addition, fine or forfeiture of pay from being combined with detention of pay without an apportionment; defines, for the purposes of this section "correctional custody"; and prohibits if practicable, correctional custody from being required to be served in immediate

association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

Deletes existing Subsection (d) authorizing an officer in charge to impose on enlisted members assigned to the unit of which he is in charge those of the punishments authorized under Subsections (b)(2)(A)-(G) that the governor specifically prescribes by regulation.

(e) Authorizes the governor, the adjutant general, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command to impose on officers in the officer's command a reprimand, and a fine equal to an amount that is not more than one month's pay; and on enlisted members in the officer's command, any punishment authorized under Subsection (d).

(f) Creates this subsection from existing text. Authorizes the officer who imposes the punishment authorized in this section or the officer's successor in command to at any time suspend, set aside, reduce, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. Prohibits the mitigated punishment from being for a greater amount than the punishment mitigated. Prohibits the amount of the fine, when mitigating reduction in grade to a fine, from being greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

Deletes existing text authorizing the officer who imposes the punishment authorized in Subsection (b) or his successor in command to at any time suspend, probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under Subsection (b), whether or not executed; authorizes the officer, in addition, to, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected; authorizes the officer to also mitigate reduction in grade to fine or forfeiture or detention of pay; prohibits the mitigated punishment, if mitigating arrest in quarters to restriction or extra duties to restriction, from being for a greater period than the punishment mitigated; prohibits the amount of the detention, if mitigating forfeiture of pay to detention of pay, from being greater than the amount of the forfeiture; and prohibits the amount of the fine, forfeiture, or detention, if mitigating reduction in grade to fine, forfeiture, or detention of pay, from being greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated. Makes nonsubstantive changes.

(g) Redesignates existing Subsection (f) as Subsection (g). Authorizes a person punished under this section who considers the punishment unjust or disproportionate to the offense to, through the proper channel, appeal to the next superior authority not later than the 15th day after the date the punishment is either announced or sent to the accused, as the commanding officer determines, rather than through the proper channel. Authorizes the superior authority to exercise the same powers with respect to the punishment imposed as may be exercised under Subsection (f), rather than Subsection (e), by the officer who imposed the punishment. Authorizes the authority who is to act on the appeal, before acting on an appeal from a punishment, to refer the case to a judge advocate for consideration and advice.

Deletes existing text requiring the authority who is to act on the appeal, before acting on an appeal from a punishment of arrest in quarters for more than seven days, correctional custody for more than seven days, forfeiture of more than seven days' pay, reduction of one or more pay grades from the fourth or a higher pay grade, extra duties for more than 14 days, restriction of more than 14 days' pay, or

detention of more than 14 days' pay, to refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and is authorized to similarly refer the case on appeal from a punishment imposed under Subsection (b).

(h) Redesignates existing Subsection (g) as Subsection (h). Provides that the imposition and enforcement of disciplinary punishment under this section for any act, rather than an act, or omission is not a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced is authorized to be shown by the accused on trial and, when shown, is required to be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(i) Redesignates existing Subsection (h) as Subsection (i). Authorizes regulations, rather than the governor by regulation, to prescribe the form of records to be kept of proceedings under this section and requires, rather than authorizes, that certain categories of those proceedings be in writing.

Deletes existing Subsection (i) relating to authorizing a commanding officer to delegate authority to make a reduction in pay grade under Subsection (b)(2)(D) to the commanding officer's executive officer, chief of staff, or vice commander.

SECTION 4. Amends Section 432.031, Government Code, as follows:

Sec. 432.031. COURTS-MARTIAL CLASSIFIED. Provides that there are three kinds of courts-martial in each of the state military forces, including, a special court-martial, consisting of a military judge and not fewer than three members, or only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in Subdivision (1)(B) (relating to if, under certain conditions the accused makes a request for only a military judge) requests. Deletes existing text requiring a special court martial to consist of not fewer than three members. Makes nonsubstantive changes.

SECTION 5. Amends Section 432.032, Government Code, as follows:

Sec. 432.032. JURISDICTION OF COURT-MARTIAL IN GENERAL. Provides that each force of the state military forces has court-martial jurisdiction over a member of the force who is subject to this chapter. Provides that the Texas Army National Guard and the Texas Air National Guard have court-martial jurisdiction over all enlisted members, rather than all persons, subject to this chapter.

SECTION 6. Amends Section 432.033(a), Government Code, as follows:

(a) Authorizes that a general court-martial has jurisdiction to try a person subject to this chapter for any offense made punishable by this chapter and, subject to Section 432.032, to, under limitations the governor prescribes, adjudge any of the certain punishments, including reprimand, forfeiture of pay and allowances, a fine of not more than \$10,000, reduction of any enlisted member to any lower rank, confinement for not more than five years, dismissal or bad conduct or dishonorable discharge, or any combination of those punishments. Deletes existing text relating certain punishments, including a fine of not more than \$1,000, confinement for not more than 360 days, forfeiture of pay and allowances, reprimand, and reduction of a noncommissioned officer to the ranks. Makes nonsubstantive changes.

SECTION 7. Amends Section 432.034, Government Code, as follows:

Sec. 432.034. JURISDICTION OF SPECIAL COURT-MARTIAL. (a) Provides that a special court-martial, subject to Section 432.032, has jurisdiction to try a person subject

to this chapter, except a commissioned officer, for any offense under this chapter. Provides that a special court-martial has the same powers of punishment as a general court-martial, except that a special court-martial is prohibited from imposing more than a \$4,000 fine and confinement of not more than one year for a single offense, rather than imposing more than a \$500 fine or confinement of more than 180 days for a single offense. Makes a nonsubstantive change.

(b) Prohibits a dismissal or bad conduct discharge, rather than dishonorable discharge, from being adjudged unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under Section 432.046(b) is detailed to represent the accused, and a military judge is detailed to the trial, except in a case in which a military judge cannot be detailed to the trial because of physical conditions or military exigencies.

SECTION 8. Amends Sections 432.035(a) and (c), Government Code, as follows:

(a) Provides that a summary court-martial, subject to Section 432.032, has jurisdiction to try persons subject to this chapter, except officers, for any offense under, rather than made punishable by, this chapter.

(c) Authorizes a summary court-martial to sentence a person to pay a fine of not more than \$1,000 and, rather than \$200 or, confinement for not more than 90 days for a single offense, to forfeit pay and allowances, and to reduction of a noncommissioned officer to any lower rank, rather than to the ranks. Makes a nonsubstantive change.

SECTION 9. Amends Section 432.042, Government Code, to authorize any commander in the grade of O-5 or higher, rather than in the grade of lieutenant colonel or in a higher grade, in the state military forces not in federal service, to convene a special court-martial.

SECTION 10. Amends Section 432.043, Government Code, to authorize any commander in the grade of O-4 or higher, rather than in the grade of major or in a higher grade, in the state military forces not in federal service, to convene a summary court-martial.

SECTION 11. Amends Sections 432.044(a), (c), and (d), Government Code, as follows:

(a) Provides that any state commissioned officer in a duty status is eligible to serve on a court-martial, rather than a court-martial for the trial of a person who may lawfully be brought before the court for trial. Makes a nonsubstantive change.

(c) Redefines, in this subsection, "unit."

(d) Prohibits a person subject to this chapter, when, rather than if, it can be avoided, from being tried by a court-martial of which any member is junior to the accused in rank or grade. Requires the convening authority, on convening a court-martial, to detail as members of the court-martial members of the state military forces that, in the convening authority's opinion, are best qualified for the duty because of age, education, training, experience, length of service, and judicial temperament. Provides that a member of the state military forces is not eligible to serve as a member of a general or special court-martial if the member is the accuser, is a witness, rather than the accuser or a witness for the prosecution, or has acted as investigating officer or counsel in the same case. Makes nonsubstantive changes.

SECTION 12. Amends Section 432.045(d), Government Code, to provide that a person who is the accuser, is a witness, rather than that a person who is the accuser or a witness for the prosecution, or has acted as investigating officer or counsel in a case is not eligible to act as military judge in the same case.

SECTION 13. Amends Section 432.046, Government Code, by adding Subsection (b-1), to prohibit trial counsel or defense counsel detailed for a general court-martial from being under the

supervision or command of the other counsel unless the accused and the prosecution expressly waive this restriction.

SECTION 14. Amends Section 432.062(d), Government Code, to prohibit a person subject to this chapter, in the preparation of an effectiveness, fitness, or efficiency report, or another report or document used in whole or part for determining whether a member of the state military forces is qualified to be advanced in grade, in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on duty, from considering certain factors, including considering or evaluating the performance of duty of the member as a member of a court-martial or a witness in a court-martial.

SECTION 15. Amends Subchapter J, Chapter 432, Government Code, by adding Section 432.1225, as follows:

Sec. 432.1225. PENAL CODE OFFENSES. Provides that a person subject to this chapter who commits an offense under the Penal Code is considered to violate this chapter and is subject to punishment under this chapter.

SECTION 16. Amends Section 432.183, Government Code, as follows:

Sec. 432.183. New heading: CHAPTER TO BE EXPLAINED. Requires that this chapter, rather than Sections 432.002, 432.003, 432.011-432.017, 432.021, 432.044, 432.046, 432.052, 432.062, 432.063, 432.091, 432.121-432.167, and 432.183-432.185, be carefully explained to every enlisted member at the time of or not later than the 30th day after the date of the member's enlistment, transfer, or induction into, or the member's order to duty in or with, any of the state military forces. Requires that it also be explained annually to each unit of the state military forces. Requires that a complete text of this chapter and of the regulations prescribed by the governor under this chapter be made available to any member of the state military forces, on the member's request, for the member's personal examination. Makes nonsubstantive changes.

SECTION 17. Amends Section 432.190(b), Government Code, to require that a fine or forfeiture imposed by nonjudicial punishment or a special or summary court-martial be paid to the officer imposing nonjudicial punishment or ordering the court or to the officer commanding at that time.

SECTION 18. Makes application of this Act prospective.

SECTION 19. Effective date: September 1, 2011.