

## CHAPTER 2021-148

### Committee Substitute for House Bill No. 873

An act relating to military affairs; amending s. 110.205, F.S.; removing requirements for certain military positions to have the same salary and benefits as career service positions; amending s. 121.055, F.S.; revising military positions required to participate in the Senior Management Service Class; amending s. 250.10, F.S.; revising requirements for appointment as Adjutant General, Assistant Adjutant General for Army, and Assistant Adjutant General for Air; requiring the Adjutant General to serve as the Commanding General of the state's organized militia; amending s. 250.35, F.S.; establishing the Florida Code of Military Justice (FCMJ); authorizing courts-martial to try a member of the Florida National Guard for offenses punishable by the FCMJ; specifying that courts-martial are administrative proceedings in the executive branch; revising procedures and personnel qualifications for convening and trial of general, special, and summary courts-martial; prohibiting delegation of the duty of convening such courts-martial; revising punishments that may be adjudged by such courts; revising provisions relating to imposition of nonjudicial punishment; revising punishments that may be adjudged; authorizing and providing requirements for suspension of nonjudicial punishment; specifying types of nonjudicial punishment; authorizing certain commanders to reduce personnel pay grades; authorizing appeal of a specific charge or specification; providing appeal requirements; amending s. 250.36, F.S.; authorizing any military judge to issue pretrial confinement warrants, subpoenas, and subpoenas duces tecum; authorizing the Adjutant General or a military judge to issue and execute search authorizations under certain circumstances; revising provisions related to care required to be provided by a sheriff or jailer to a person convicted by court-martial; amending s. 250.40, F.S.; revising membership, terms, and meeting requirements of the Armory Board; amending s. 250.351, F.S.; providing that members of the Florida National Guard are subject to the FCMJ whether in civilian or military status; providing requirements for establishment of jurisdiction; removing references to a court of inquiry; amending s. 250.375, F.S.; revising circumstances under which a physician may practice medicine during an emergency, a disaster, or federal military training; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (p) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(p)1. All military personnel of the Department of Military Affairs. Unless otherwise fixed by law, the salary and benefits for such military personnel shall be set by the Department of Military Affairs in accordance with the appropriate military pay schedule.

~~2.—The military police chiefs, military police officers, firefighter trainers, firefighter rescuers, and electronic security system technicians shall have salary and benefits the same as career service employees.~~

Section 2. Paragraph (g) of subsection (1) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the “Senior Management Service Class,” which shall become effective February 1, 1987.

(1)

(g) Effective July 1, 1996, participation in the Senior Management Service Class shall be compulsory for any member of the Florida Retirement System employed with the Department of Military Affairs in the positions of the Adjutant General, Assistant Adjutant General-Army, Assistant Adjutant General-Air, State Quartermaster, Director of Human Resources Military Personnel, Director of Legislative Affairs Administration, Inspector General, Executive Officer, and additional directors as designated by the agency head, not to exceed a total of 10 positions. In lieu of participation in the Senior Management Service Class, such members may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

Section 3. Paragraphs (a) through (n) of subsection (2) of section 250.10, Florida Statutes, are redesignated as paragraphs (b) through (o), respectively, subsections (1), (4), and (5) of that section are amended, and a new paragraph (a) is added to subsection (2) of that section, to read:

250.10 Appointment and duties of the Adjutant General.—

(1) In case of a vacancy, the Governor shall, subject to confirmation by the Senate, appoint a federally recognized officer of the Florida National Guard, who has served in the Florida National Guard for at least the preceding 5 of the last 10 years and attained the rank of colonel or higher, to be the Adjutant General of the state with the rank of not less than brigadier general or such higher rank as authorized by applicable tables of organization of the Department of the Army or the Department of the Air Force. The Adjutant General and all other military personnel of the Florida National Guard on full-time military duty with the Department of Military Affairs, except military police and firefighters, who are paid from state funds shall receive the pay and allowances of their respective grade as prescribed by applicable pay tables of the national military establishment for similar

grade and period of service of personnel, unless a different rate of pay and allowances is specified in an appropriation act of the Legislature. An officer, with his or her consent, may be ordered to state active duty for administrative duty with the Department of Military Affairs at a grade lower than the officer currently holds.

(2) The Adjutant General shall:

(a) Serve as the Commanding General of the state’s organized militia.

(4)(a) The Adjutant General shall, subject to confirmation by the Senate, employ a federally recognized officer of the Florida National Guard, who has served in the Florida Army Guard for at least 3 ~~the preceding 5~~ years and attained the rank of colonel or higher at the time of appointment, to be the Assistant Adjutant General for Army.

(b) The Adjutant General may, subject to confirmation by the Senate, employ an additional, federally recognized officer of the Florida National Guard, who has served in the Florida Army Guard for at least 3 ~~the preceding 5~~ years and attained the rank of colonel or higher at the time of appointment, to be a second Assistant Adjutant General for Army.

Each officer shall perform the duties required by the Adjutant General.

(5) The Adjutant General shall, subject to confirmation by the Senate, employ a federally recognized officer of the Florida National Guard, who has served in the Florida Air Guard for at least 3 ~~the preceding 5~~ years and attained the rank of colonel or higher at the time of appointment, to be the Assistant Adjutant General for Air. The officer shall perform the duties required by the Adjutant General.

Section 4. Section 250.35, Florida Statutes, is amended to read:

250.35 Military justice ~~Courts-martial.~~—

(1) The Uniform Code of Military Justice (UCMJ), 10 U.S.C. ss. 801 et seq., and the Manual for Courts-Martial (2019 ~~2012~~ Edition) are adopted for use by the Florida National Guard, except as otherwise provided by this chapter, and together with this chapter may be referred to as the Florida Code of Military Justice (FCMJ).

(2) Courts-martial may try a member of the Florida National Guard for any crime or offense made punishable by the FCMJ ~~Uniform Code of Military Justice (2012 Edition)~~, except that a commissioned officer, warrant officer, or cadet may not be tried by summary courts-martial.

(3) Courts-martial in this state are administrative proceedings in the executive branch and are not courts under Art. V of the State Constitution.

~~(4)(3)~~ Courts-martial in the state shall be of three kinds, namely: general courts-martial, special courts-martial, and summary courts-martial.

General courts-martial and special courts-martial shall be tried by a military judge and a panel of officers pursuant to the Manual for Courts-Martial, except as otherwise provided by regulations adopted by the Florida as designated in applicable National Guard regulations. However, a panel may include enlisted members, at the request of an enlisted accused defendant. The military judge in a general court-martial or special court-martial must be qualified by attendance at appropriate Judge Advocate General schools or ~~and~~ must be certified as qualified by the Adjutant General of Florida. In a general and special court-martial, the accused defendant may waive trial by panel and request trial by military judge alone. The granting of such waiver shall be in the military judge's discretion. The military judge in a summary court-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Convening Authority or a higher authority.

~~(5)(4)~~ General courts-martial in the Florida National Guard may be convened by order of the President of the United States, the Governor, or the Adjutant General. This duty is not delegable, as delegated by the Governor, and Such courts may, upon a finding of guilt, ~~adjudge~~ no punishment or ~~adjudge one or more of the following punishments:~~

(a) Confinement in an appropriate penal institution for up to 367 days.

(b) Dismissal or discharge from the Florida National Guard with such characterization of service deemed appropriate by the military judge or panel members, including a dishonorable or bad conduct discharge.

(c) A fine of up to not exceeding \$500 per specification, confinement not in excess of 200 days;

(d) Forfeiture of all or a portion of pay and allowances,; reprimand, dismissal, or dishonorable discharge from the service; and

(e) Reduction to the lowest enlisted pay grade or any intermediate pay grade for enlisted personnel.

(f) A written reprimand, which shall be included in the accused's official military personnel file ~~Any two or more of such punishments may be combined in the sentence authorized in this section.~~

~~(6)(5)~~ Special courts-martial authorized to adjudicate a bad conduct discharge in ~~When not in the active service of the United States, the commanding officer of each major command of the Florida National Guard or his or her superior commander may be convened by order of commanding officers of the Florida National Guard who are in the chain of command of the accused and hold the rank of colonel or by order of a person authorized to convene a general court-martial~~ convene special courts-martial empowered to adjudicate a bad conduct discharge from the service, subject to the procedural protections provided in 10 U.S.C. s. 819. This duty is not delegable ~~Special courts-martial with bad conduct discharge authority have~~

~~the same powers of punishment as do general courts-martial, except that fines adjudged by special courts-martial may not exceed \$300 and confinement may not exceed 100 days. Special courts-martial with bad conduct discharge authority may adjudicate a bad conduct discharge from the service, but may not adjudicate a dismissal or dishonorable discharge from the service. Such courts may, upon a finding of guilt, adjudge no punishment or adjudge one or more of the following punishments:~~

- ~~(a) Confinement in an appropriate penal institution for up to 100 days.~~
- ~~(b) Discharge from the Florida National Guard with a bad conduct discharge.~~
- ~~(c) A fine of up to \$400 per specification.~~
- ~~(d) Forfeiture of all or a portion of pay and allowances for up to 1 year.~~
- ~~(e) Reduction to the lowest enlisted pay grade or any intermediate pay grade for enlisted personnel.~~
- ~~(f) A written reprimand, which shall be included in the accused's official military personnel file.~~

~~(7) Special courts-martial not authorized to adjudicate a bad conduct discharge in the Florida National Guard may be convened by order of commanding officers of the Florida National Guard who are in the chain of command of the accused and hold the rank of lieutenant colonel or by order of a person authorized to convene a general court-martial or special court-martial authorized to adjudicate a bad conduct discharge. This duty is not delegable. Such courts may, upon a finding of guilt, adjudge no punishment or adjudge one or more of the following punishments:~~

- ~~(a) Confinement in an appropriate penal institution for up to 100 days.~~
- ~~(b) A fine of up to \$300 per specification.~~
- ~~(c) Forfeiture of all or a portion of pay and allowances for up to 60 days.~~
- ~~(d) Reduction to the lowest enlisted pay grade or any intermediate pay grade for enlisted personnel.~~
- ~~(e) A written reprimand, which shall be included in the accused's official military personnel file.~~

~~(8) Summary courts-martial in the Florida National Guard may be convened by order of commanding officers of the Florida National Guard who are in the chain of command of the accused and hold the rank of lieutenant colonel or by order of a person authorized to convene a general court-martial or special court-martial. This duty is not delegable. Such courts may, upon a finding of guilt, adjudge no punishment or adjudge one or more of the following punishments:~~

- (a) Confinement in an appropriate penal institution for up to 25 days.
- (b) A fine of up to \$200 per specification.
- (c) Forfeiture of all or a portion of pay and allowances for up to 60 days.
- (d) Reduction by no more than two pay grades for enlisted personnel.
- (e) A reprimand.

~~(6) When not in the active service of the United States, the commanding officer of each garrison, fort, post, camp, air base, auxiliary air base, any other place where troops are on duty, division, brigade, group, regiment, battalion, wing, or squadron may convene special courts-martial for his or her command; but such special courts-martial may be convened by superior commanders when advisable. Special courts-martial have the same powers of punishment as general courts-martial, except that fines adjudged by special courts-martial may not exceed \$300 and confinement may not exceed 100 days, and dismissal or discharge from the service may not be adjudicated.~~

~~(7) When not in the active service of the United States, the commanding officer of each battalion, higher headquarters, or similar type unit may convene summary courts-martial for such place or command. Any person who may convene a general court-martial or special court-martial may convene a summary court-martial. Summary courts-martial may adjudge a fine not in excess of \$200 per offense, confinement not in excess of 25 days, forfeiture of pay and allowances, and reduction by one grade of members whom the convening authority had the authority to promote to their present grade. Any two or more of such punishments may be combined in the sentence authorized to be imposed by such courts, except that confinement may not be combined with a fine.~~

(9)(8) Commanding officers ~~When not in the active service of the United States, commanders may impose nonjudicial punishment under regulations adopted by the Florida National Guard. Enlisted personnel may receive nonjudicial punishment from their unit commander or from a higher commander in their chain of command. Company grade and warrant officers may receive nonjudicial punishment from a commander who is a field grade or general officer in their chain of command. Field grade officers may receive nonjudicial punishment from a commander who is a general officer in their chain of command. Such commanders may, upon a finding of guilt, adjudge no punishment or adjudge one or more of the following punishments in accordance with 10 U.S.C. s. 815, except that punishment may not exceed:~~

- (a) Oral or written reprimand.
- (b) Extra duty of up to 14 days of state active duty, annual training, or similar duty, or up to 14 unit training assemblies.

(c) Restriction to the armory, training site, or other specified limits, with or without suspension from duty; up to ~~for~~ 14 days of state active duty, annual training, or similar duty; or up to 14 unit training assemblies.

(d) A fine Fines of up to \$200 per specification.

(e)1. For enlisted personnel in pay grades above E-4, reduction by one pay grade of a member whom the commander had the authority to promote.

2. For enlisted personnel in pay grades E-4 and below, reduction by two pay grades.

(f) Forfeiture of base pay for up to 14 days of state active duty, annual training, or similar duty, or up to 14 unit training assemblies.

(g)(f) Any combination of paragraphs (a)-(f) (a)-(e), except that a combination of punishment imposed under paragraphs (b) and (c) may not exceed 14 days or 14 unit training assemblies.

(10) A commander who imposes nonjudicial punishment, or a successor in command over the person punished, may, at any time, suspend any part or amount of the punishment, subject to the following:

(a) Any part or amount of the unexecuted punishment may, at any time, be suspended.

(b) An executed punishment of reduction, fine, or forfeiture of pay may be suspended only within 8 months after the date of execution.

(c) Suspension of a punishment may not be for longer than 12 months from the date of the suspension, and the expiration of the current enlistment or term of service of the servicemember involved automatically terminates the period of suspension.

(11) Regulations adopted by the Florida National Guard may provide for two types of nonjudicial punishment: plenary and summarized.

(12)(a) Unless jurisdiction is withheld by a higher-level commander, commanders in command positions authorized the rank of captain may reduce personnel currently serving in pay grades E-2 through E-4.

(b) Unless jurisdiction is withheld by a higher-level commander, commanders in command positions authorized the rank of lieutenant colonel may reduce personnel currently serving in pay grades E-2 through E-6.

(c) Unless jurisdiction is withheld by a higher-level commander, commanders in command positions authorized the rank of colonel and above may reduce personnel currently serving in pay grades E-2 through E-9.

(13)(a)(9) A finding of guilt and the sentence of a summary court-martial may be appealed to the convening authority. If a sentence of imprisonment

has been adjudged, the findings and sentence may be appealed to the Adjutant General.

(b)(10)(a) A finding of guilt and the sentence of a court-martial convened under this chapter, as approved by the convening authority and the Adjutant General if a sentence of imprisonment has been adjudged, may be appealed to the First District Court of Appeal.

(c)(b) ~~A~~ Any dismissal of a general or special court-martial case, or a specific charge or specification, by the military judge which does not violate the accused's defendant's constitutional rights may be appealed by the Florida National Guard to the First District Court of Appeal.

(d) A finding of guilt and the sentence of a nonjudicial punishment may be appealed to the next higher commander in the chain, but such appeal shall be the only and final appeal.

(14)(11) When the Florida National Guard is not in the active service of the United States, a sentence of dismissal from the service or dishonorable discharge from the service, imposed by court-martial, may not be executed until approved by the Governor.

Section 5. Section 250.36, Florida Statutes, is amended to read:

250.36 Mandates and process.—

(1) Military courts may issue all process and mandates, including writs, warrants, and subpoenas, necessary to carry out the powers vested in the courts. Such mandates and process may be directed to the sheriff of a ~~any~~ county and must be in the form prescribed by the Adjutant General in the rules issued by him or her under this chapter. All officers to whom such mandates and process are directed must execute the same and make returns of their acts thereunder according to the requirements of the form of process. A ~~Any~~ sheriff or other officer who neglects or refuses to perform the duty enjoined upon him or her by this chapter is subject to the same liabilities, penalties, and punishments as are prescribed by the law for neglect or refusal to perform any other duty of his or her office.

(2) When not in the active service of the United States, the Adjutant General, or his or her designee, or a military judge ~~of the Florida National Guard~~ may issue a pretrial confinement warrant for the purpose of securing the presence of an accused at trial. The warrant must be directed to the sheriff of the county, directing the sheriff to arrest the accused and bring the accused before the court for trial if the accused has disobeyed an order in writing to appear before the court which was delivered to the accused in person or mailed to the accused's last known address, along with a copy of the charges. Pretrial confinement may not exceed 48 hours. However, the Adjutant General or military judge may extend pretrial confinement for up to not more than 15 days in order to facilitate the presence of the accused at trial. For purposes of this subsection, the term "military judge" does not



include a summary court-martial officer who is not qualified to act as a military judge in general or special courts-martial.

(3) When not in the active service of the United States, the Adjutant General, or his or her designee, or a military judge ~~of the Florida National Guard~~ may issue subpoenas and subpoenas duces tecum and enforce by attachment the attendance of witnesses and the production of documents and other items of evidentiary value.

(4) When not in the active service of the United States, the Adjutant General, or his or her designee, or a military judge may issue and execute search authorizations when the Florida National Guard or Department of Military Affairs has control over the location where the property or person to be searched is situated or found or, if the location is not under military control, when the commander has control over persons subject to military law or law of war.

(5)(4) When a sentence of confinement is imposed by ~~a any~~ court-martial of the Florida National Guard, the Adjutant General or his or her designee whose approval makes effective the sentence imposed by the court-martial shall issue a warrant directing the sheriff of the appropriate county to take the convicted person into custody and confine him or her in the jail of such county for the period specified in the sentence of the court. A Any sheriff who receives ~~receiving~~ such warrant must promptly execute the warrant by taking the convicted person into custody and confining him or her in jail. The sheriff or jailer in charge of ~~a any~~ county jail shall receive ~~a any~~ person committed for confinement in such jail under proper process from a court-martial, and provide for the care, subsistence, and safekeeping of such prisoner just as the sheriff or jailer would a prisoner properly committed for custody under the sentence of any civil or criminal court.

(6)(5) All sums of money collected through fines adjudged by a general, special, or summary court-martial or through the imposition of nonjudicial punishment of the Florida National Guard shall be paid over at once by the officer collecting the fine to the commanding officer of the organization to which the member belongs and be deposited in accordance with s. 250.40(5)(c)1.

Section 6. Subsections (2) and (3) and paragraph (c) of subsection (5) of section 250.40, Florida Statutes, are amended to read:

250.40 Armory Board; creation; membership, terms, and compensation; duties and responsibilities.—

(2)(a) Voting members of the Armory Board include the Governor as Commander in Chief and chair of the board, the Adjutant General as vice chair, the Assistant Adjutants General of the Army, and major subordinate command commanders ~~reporting directly to the Adjutant General~~, in the active Florida Army National Guard.

~~(b)~~ A ~~If necessary due to exigencies of military duty, any member of the board may request excusal from an Armory Board meeting by the Adjutant General or his or her designee. A member so excused may delegate his or her deputy commander or executive officer to attend the meeting meetings as an alternate member with voting privileges.~~

~~(c)(b)~~ The Governor may appoint one representative from his or her staff to attend meetings of the Armory Board. The appointee shall serve as a nonvoting advisory member and liaison to the board.

~~(d)(e)~~ The State Quartermaster shall act as the recorder and secretary of the Armory Board. In addition, the State Quartermaster shall execute the policy, decisions, and official actions of the board. When the board is in recess, the State Quartermaster shall conduct the day-to-day business of the board. The State Quartermaster and his or her staff are not liable, civilly or criminally, for any lawful act done by them in the performance of their duty, while acting in good faith, and while acting in the scope of either state or federal duty.

(3) The term of each member of the Armory Board is the period during which the member possesses the title and qualifications for such membership provided in this chapter under subsection (1).

(5) The Armory Board must:

(c) Receive from counties, municipalities, and other sources donations of land, services, or money to aid in providing, operating, improving, and maintaining armories and other facilities used for military purposes. The national military policy recognizes the Florida National Guard as an important component of the United States Army and Air Force, and a member of the total force, sharing in the defense of the country. The Florida National Guard is available to assist the state and local governments in the event of an emergency. Therefore, it is reasonable and equitable that the expense of maintaining the Florida National Guard be shared by the federal, state, and local governments. As the Federal Government is providing liberally for the equipment and training of the Florida National Guard and the state for its administration, management, and maintenance, local governments are encouraged to provide services at no cost to Florida National Guard armories.

1. Any contributions of money, any moneys derived from the rental of armories and other facilities, the armory-operations allowances provided in s. 250.20, and all money collected through fines imposed by a court-martial or nonjudicial proceeding of the Florida National Guard, as provided in s. 250.36(6) ~~s. 250.36(5)~~, shall be received on behalf of the Armory Board by the post commander of such facility and must be deposited into a federal depository, approved by the Department of Military Affairs, in an account in a banking institution in the county in which such facility is located.

2. The funds received shall be disbursed for the purposes enumerated in this subsection at the discretion of the post commander.

3. Any real property donated shall be held as other property for use by the state, and counties and municipalities may make donations of lands by deed or long-term lease and contributions of moneys for the purposes set forth in this section, and may issue bonds or certificates of indebtedness to provide funds for such purposes. Boards of county commissioners may levy taxes, not to exceed 1 mill, to provide funds for the construction of armories or for the retirement of bonds or certificates of indebtedness issued to provide funds for the construction of armories. Counties and municipalities may construct armories upon state-owned land, which may be made available for such purpose by action of the Armory Board. Counties and municipalities may also grant to the Armory Board, by deed or long-term leases, property that is acquired or buildings that are constructed for military purposes. Each local government is encouraged to provide economic incentives to reduce the cost of locating Florida National Guard facilities in its jurisdiction. A local government may appropriate funds to pay expenses of the Florida National Guard unit in its jurisdiction. Such funds will be received, accounted for, and dispersed as other funds received by the unit.

Section 7. Section 250.351, Florida Statutes, is amended to read:

250.351 Courts-martial ~~Court-martial~~; jurisdiction.—

(1) Members of the Florida National Guard are subject to this chapter and the Florida Uniform Code of Military Justice, including the punitive provisions thereof, at all times during their enlistment or appointment, whether in civilian or military status and whether serving in this state or outside the state. Jurisdiction is based exclusively on membership in the Florida National Guard and not subject to any additional requirements.

(2) Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force. Courts-martial under the Florida Code of Military Justice have primary jurisdiction over military offenses committed when not in the active service of the United States. A proper civilian court has primary jurisdiction over a nonmilitary offense when an act or omission violates both the Florida Code of Military Justice and local criminal law, foreign or domestic. In such a case, a court-martial may be initiated only after the civilian authority has declined to prosecute or has dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense. Courts-martial under the Florida Code of Military Justice may be initiated for offenses committed by a Florida National Guard member while in the active service of the United States only after the commander with authority over the offense under the Uniform Code of Military Justice has declined to prosecute or has dismissed the charge, provided jeopardy has not attached.

(3)(2) Courts-martial ~~A court-martial or court of inquiry~~ may be convened and held in a unit of the Florida National Guard serving outside the state, and the court has the same jurisdiction and powers as if the courts-martial ~~court-martial or court of inquiry~~ were held within the state. An offense committed outside the state may be tried and punished outside the state or within the state.

Section 8. Section 250.375, Florida Statutes, is amended to read:

250.375 Medical officer authorization.—A physician ~~Physicians~~ who holds ~~hold~~ an active license to practice medicine in any other state, a United States territory, or the District of Columbia or Puerto Rico, while serving as a medical officer with or in support of medical officers in the Florida National Guard, pursuant to federal or state orders, may ~~are expressly authorized to~~ practice medicine on military personnel or civilians during an emergency or, declared disaster, or during federal military training.

Section 9. This act shall take effect July 1, 2021.

Approved by the Governor June 21, 2021.

Filed in Office Secretary of State June 21, 2021.