

SENATE BILL NO. 90—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE OFFICE OF THE MILITARY)

PREFILED DECEMBER 20, 2014

Referred to Committee on Government Affairs

SUMMARY—Confers upon a person who is subject to the Nevada Code of Military Justice the right to demand a court-martial in lieu of accepting nonjudicial punishment. (BDR 36-338)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to military justice; conferring upon a person who is subject to the Nevada Code of Military Justice the right to demand a trial by court-martial in lieu of accepting nonjudicial punishment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law provides that a commanding officer in the state military forces
2 may, for minor offenses, impose certain punishments on certain members of the
3 state military forces without convening a court-martial. (NRS 412.2875, 412.288)
4 Existing law provides that such a member has the right to demand a trial by court-
5 martial only if the punishment imposes a restraint of freedom through restriction
6 and arrest in quarters. (NRS 412.2445, 412.2879) This bill expands the right of
7 such a member to demand a trial by court-martial before the imposition of any
8 punishment, including a nonjudicial punishment such as suspension from duty,
9 forfeiture of pay or reduction in pay grade.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 412.243 is hereby amended to read as follows:
2 412.243 “Nonjudicial punishment” means punishment that is
3 imposed:
4 1. Pursuant to NRS 412.286 to 412.302, inclusive;



2. Against an accused, through the chain of command, by the accused's commanding officer or other officer in charge; and

3. Without ~~[the need to convene]~~ a *trial by* court-martial.

Sec. 2. NRS 412.2879 is hereby amended to read as follows:

412.2879 An accused facing nonjudicial punishment has the right to demand a trial by court-martial ~~[only if the commanding officer who initiated the proceeding for nonjudicial punishment elects to impose restraint of freedom punishments. If, before an offer of nonjudicial punishment is made, the commanding officer elects not to impose restraint of freedom punishments, the accused has no right to demand a trial by court martial. If the commanding officer does not advise the accused serviceman or servicewoman of his or her right to reject the nonjudicial punishment and demand a trial by court martial on initiation of the nonjudicial punishment action, the commanding officer thereby waives the right to retain the restraint of freedom punishments.]~~ *in lieu of accepting the nonjudicial punishment, at any time before the imposition of the nonjudicial punishment.*

Sec. 3. NRS 412.293 is hereby amended to read as follows:

412.293 1. A commanding officer who, after preliminary inquiry, determines that ~~[the]~~ *nonjudicial* punishment ~~[options will include restraint of freedom punishments]~~ *is appropriate for a particular serviceman or servicewoman* shall use a formal proceeding.

2. If the commanding officer determines that a formal proceeding is appropriate, the accused must be notified in writing of:

(a) The intent of the commanding officer to initiate nonjudicial punishment;

(b) The intent of the commanding officer to use a formal proceeding;

(c) The maximum punishments allowable under the formal proceeding;

(d) The right of the accused to remain silent;

(e) Each offense that the accused has allegedly committed with reference to sections of the law that are alleged to have been violated;

(f) The right of the accused to confront witnesses, examine the evidence and submit matters in defense, extenuation and mitigation;

(g) The right of the accused to consult with a judge advocate and the location of such counsel;

(h) The right of the accused to demand a trial by court-martial at any time before the imposition of the nonjudicial punishment; and

(i) The right of the accused to appeal.



3. If the commanding officer determines that a formal proceeding is appropriate, the accused must be given a reasonable time to consult with counsel, to gather matters in defense, extenuation and mitigation and to decide whether to accept the nonjudicial punishment or demand a trial by court-martial. This decision period must be at least 48 hours, depending on the availability of counsel, but such period may be extended at the request of the accused.

4. The commanding officer is not bound by the formal rules of evidence before courts-martial and may consider any matter the commanding officer reasonably believes is relevant to the offense.

Sec. 4. NRS 412.2445 and 412.2925 are hereby repealed.

Sec. 5. The amendatory provisions of this act apply to any nonjudicial punishment which was imposed, but has not been executed, before July 1, 2015.

Sec. 6. This act becomes effective on July 1, 2015.

TEXT OF REPEALED SECTIONS

412.2445 “Restraint-of-freedom punishments” defined. “Restraint-of-freedom punishments” means restriction and arrest in quarters.

412.2925 Use of summarized proceeding if commanding officer determines punishment will not include restraint-of-freedom punishments; notice to accused; accused not entitled to counsel; scheduling of hearing.

1. A commanding officer, after preliminary inquiry, may use a summarized proceeding if it is determined that punishment will not include restraint-of-freedom punishments.

2. A Summarized Record of Proceedings, under Article 15, UCMJ, as contained in Army Regulation 27-10, or AF Form 3070, as they may be amended or replaced, must be used to record the summarized nonjudicial punishment proceedings. However, the notification of the right to demand a trial by court-martial must be stricken from the form.

3. If a commanding officer who intends to impose nonjudicial punishment determines that a summarized proceeding is appropriate, the accused must be notified in writing of:

(a) The intent of the commanding officer to initiate nonjudicial punishment;

(b) The intent of the commanding officer to use summarized proceedings;



(c) The lack of a right on the part of the accused to demand a trial by court-martial;

(d) The maximum punishments allowable pursuant to the summarized proceeding;

(e) The right of the accused to remain silent;

(f) Each offense that the accused has allegedly committed with reference to the sections of the law allegedly violated;

(g) The right of the accused to confront witnesses, examine the evidence and submit matters in defense, extenuation and mitigation; and

(h) The right of the accused to appeal within the period set forth in subsection 4 of NRS 412.296.

4. If a commanding officer determines that a summarized proceeding is appropriate, the accused does not have the right to consult with counsel before the hearing and the accused does not have the right to counsel or a spokesperson during the hearing.

5. Consistent with the regulations applicable to the accused's service, if a hearing is scheduled, notification of the date and time of the hearing may be made orally or in writing. The hearing must be scheduled not earlier than 24 hours and not later than 60 days after the accused receives notification pursuant to subsection 3 of the intent of the commanding officer to impose nonjudicial punishment.

