

ASSEMBLY BILL NO. 37—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE OFFICE OF THE MILITARY)

PREFILED NOVEMBER 16, 2018

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing punishment of certain members of the Nevada National Guard for minor misconduct. (BDR 36-340)

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

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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; eliminating the right of a serviceman or servicewoman of the Nevada National Guard to demand a trial by court-martial in lieu of accepting nonjudicial punishment; requiring a commanding officer of the Nevada National Guard to make a legal consultation before determining nonjudicial punishment is appropriate; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes a commanding officer in the state military forces to
2 punish certain servicemen and servicewomen for minor offenses by imposing
3 nonjudicial punishment rather than convening a trial by court-martial. (NRS
4 412.286-412.302) Under existing law, a serviceman or servicewoman has the right
5 to demand a trial by court-martial instead of accepting the nonjudicial punishment.
6 (NRS 412.2879) **Sections 1-3** of this bill eliminate the right of a serviceman or
7 servicewoman to demand a trial by court-martial instead of accepting a nonjudicial
8 punishment. **Section 3** also: (1) requires that a commanding officer considering
9 imposing nonjudicial punishment consult with a judge advocate in determining
10 whether nonjudicial punishment is appropriate; and (2) authorizes the commanding
11 officer to consult with a superior officer in making that determination.



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

Section 1. NRS 412.286 is hereby amended to read as follows:

412.286 1. Under Office regulations, limitations may be placed on the powers granted by NRS 412.286 to 412.302, inclusive, with respect to the kind and amount of punishment authorized ~~[.] and~~ the categories of commanding officers and warrant officers exercising command authorized to exercise those powers ~~. [., the applicability of NRS 412.286 to 412.302, inclusive, to an accused who demands trial by court martial, and the kinds of courts martial to which the case may be referred upon such a demand. However, punishment may not be imposed upon any member of the Nevada National Guard under NRS 412.286 to 412.302, inclusive, if the member has, before the imposition of such punishment, demanded trial by court martial in lieu of such punishment.]~~ Under Office regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by Office regulations, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate his or her powers under NRS 412.286 to 412.302, inclusive, to a principal assistant.

2. When nonjudicial punishment has been imposed for an offense, nonjudicial punishment may not again be imposed for the same offense. Administrative action can be taken for the same offense and will not be considered double punishment under the Code. For the purposes of this subsection, "same offense" means an offense that was part of a single incident or course of conduct.

3. After nonjudicial punishment has been imposed, it may not be increased, upon appeal or otherwise, unless the punishment imposed was not provided for in the Code.

4. When a commanding officer determines that nonjudicial punishment is appropriate for a particular serviceman or servicewoman, all known offenses determined to be appropriate for disposition by nonjudicial punishment and ready to be considered at that time, including, without limitation, all such offenses arising from a single incident or course of conduct, must ordinarily be considered together, rather than being made the basis for multiple punishment.

5. Nonjudicial punishment may not be imposed for any offense which was committed more than 3 years before the date of imposition of punishment, unless such 3-year limitation is waived by the accused in writing or unless the accused has filed an appeal under this Code.



6. Nothing in subsection 2 or 4 precludes a commanding officer from imposing, at one time, more than one punishment nonjudicially for the offense or offenses arising from a single incident or course of conduct authorized in the Code.

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

412.2879 An accused facing nonjudicial punishment ~~[has]~~ *does not have* the right to demand a trial by court-martial 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 ~~[,]~~ *or investigation*, determines that nonjudicial punishment is appropriate for a particular serviceman or servicewoman shall use a formal proceeding. *In determining whether nonjudicial punishment is appropriate, the commanding officer shall consult with a judge advocate. The commanding officer may also consult with a superior commissioned officer who is not the superior authority who is to act on appeal pursuant to NRS 412.296.*

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; *and*

~~(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 ~~[,]~~ *and* 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 of time* must be at least 48 hours, depending on the



1 availability of counsel, but such period *of time* may be extended at
2 the request of the accused.

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

6 **Sec. 4.** The amendatory provisions of this act do not apply to
7 any formal proceeding relating to nonjudicial punishment for which
8 a serviceman or servicewoman has been issued written notice
9 pursuant to subsection 2 of NRS 412.293, as that subsection existed
10 on June 30, 2019, before July 1, 2019.

11 **Sec. 5.** This act becomes effective on July 1, 2019.

