

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL16

By: Senator Bookout

As engrossed 2-11-87

"AN ACT AUTHORIZING THE APPOINTMENT OF MILITARY JUDGES IN
GENERAL AND SPECIAL COURTS-MARTIAL; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 60 of Act 50 of 1969, the same being Arkansas Statute 11-615, is hereby amended to read as follows:

"Section 60. Courts-martial classified. There shall be three (3) kinds of courts-martial in each of the forces of the organized Militia; namely:

(a) General courts-martial, which shall consist of-

(1) A military judge and any number of members not less than five (5); or

(2) Only a military judge, if before the court is assembly the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of-

(1) Any number of members not less than three (3); or

(2) A military judge and not less than three (3) members; or

(3) Only a military judge, if one has been detailed to the court, and the accused under the condition as those prescribed in clause (a) (2) so requests; and

(c) Summary courts-martial which shall consist of one (1) officer."

SECTION 2. Section 71 of Act 50 of 1969, the same being Arkansas Statute 11-626, is hereby amended to read as follows:

"Section 71. Who may serve on courts-martial. (a) Any commissioned

officer of or on duty with the organized Militia is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trials.

(b) Any warrant officer of or on duty with the organized Militia is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted member of the organized Militia who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if before the convening of the court the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them; but the convening authority shall make a detailed written statement to be appended to the record stating why they could not be obtained.

(2) In this section, the word "unit" means any regularly organized body of the organized Militia not larger than a company, squadron, or a body corresponding to one of them.

(d) (1) When it can be avoided, no person subject to this code shall be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members as in his opinion are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the State and of appropriate rank, the convening authority shall appoint him as

president of a special court-martial, but only for cases in which there is no military judge. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction.

SECTION 3. Section 72 of Act 50 of 1969, the same being Arkansas Statute 11-627, is hereby amended to read as follows:

"Section 72. Military Judge of a general or special court-martial.

(a) A military judge shall be detailed to each general court-martial. Subject to such regulations as may be adopted by the Governor, a military judge may be detailed to any special court-martial.

(b) The Governor may prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martials to which he has been detailed.

(c) A military judge shall be a commissioned officer who is a member of the bar of the highest court of a state or a member of the bar of a federal court and who is certified to be qualified for such duty by the State Judge Advocate.

(d) The military judge of a general court-martial shall be designated by the State Judge Advocate, or his designee, in accordance with such regulations as may be prescribed under subsection (a).

(e) Neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the State Judge Advocate, or his designee and may perform duties of a judicial or non-judicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that State Judge Advocate or his designee.

(f) No person shall be eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as a counsel in the same case.

(g) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel nor may he vote with the members of the court."

SECTION 4. Section 73 of Act 50 of 1969, the same being Arkansas Statute 11-628, is hereby amended to read as follows:

"Section 73. Detail of trial counsel and defense counsel. (a) For each general and special court-martial, the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

(1) Must be a person who is a member of the bar of the highest court of a state or a member of the bar of a federal court; and

(2) Must be certified as competent to perform such duties by the State Judge Advocate.

(c) In the case of a special court-martial:

(1) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(2) If the trial counsel is a member of the bar of the highest court of a state, the defense counsel detailed by the convening authority must be likewise qualified."

SECTION 5. Section 75 of Act 50 of 1969, the same being Arkansas Statute 11-630, is hereby amended to read as follows:

"Section 75. Absent and additional members. (a) No member of a general or special court-martial shall be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the military judge, the accused, and the counsel.

(c) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel."

SECTION 6. Section 83 of Act 50 of 1969, the same being Arkansas Statute 11-638, is hereby amended to read as follows:

"Section 83. Unlawfully influencing action of court. No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof with respect to the findings or sentence adjudged by the court, or with respect to any other military tribunal or any member thereof, in reading the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts."

SECTION 7. Section 84 of Act 50 of 1969, the same being Arkansas Statute 11-639, is hereby amended to read as follows:

"Section 84. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the State and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under this Act. Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as his associate

counsel; otherwise, they shall be excused by the president of the court or the military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by this Act, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when is qualified to be the defense counsel as required by this Act, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused."

SECTION 8. Section 85 of Act 50 of 1969, the same being Arkansas Statute 11-640, is hereby amended to read as follows:

"Section 85. Sessions. Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the military judge and the reporter to put the findings in proper form; and those proceedings shall be on the record. All other proceedings, including any consultation of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsels, and the military judge if one is assigned to the case."

SECTION 9. Section 87 of Act 50 of 1969, the same being Arkansas Statute 11-642, is hereby amended to read as follows:

"Section 87. Challenges. (a) Members of a general or special court-martial and the military judge of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges

by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause."

SECTION 10. Section 88 of Act 50 of 1969, the same being Arkansas Statute 11-643, is hereby amended to read as follows:

"Section 88s. (a) The military judge, interpreters, and in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) Each witness before a military court shall be examined on oath or affirmation."

SECTION 11. Section 92 of Act 50 of 1969, the same being Arkansas Statute 11-647, is hereby amended to read as follows:

"Section 92. Opportunity to obtain witnesses and other evidence. (a) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the Governor may prescribe.

(b) The military judge, the president of a court-martial, or a summary court officer may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and copy of the charges disobeys a written order by the convening authority to appear before the court;

(2) Issue subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) Sentence for refusal to be sworn or to answer as provided in actions before civil courts of the State.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the State."

SECTION 12. Section 97 of Act 50 of 1969, the same being Arkansas

Statute 11-652, is hereby amended to read as follows:

"Section 97. Voting and rulings. (a) Voting by members of a general or special court-martial upon question of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge of a general or special court-martial and the president of a special court-martial without a military judge shall rule upon interlocutory questions other than challenges arising during the proceedings. Any such ruling made by the military judge of a general or special court-martial who is a member of the bar of the State upon an interlocutory question of accused's sanity is final and constitutes the ruling of the court. However, the military judge or president may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in this code beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge of a general or special court-martial and the president of a special court-martial without a military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused; and he must be acquitted;

(3) That if there is a reasonable doubt as to the degree of guilty, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the State."

SECTION 13. Section 100 of Act 50 of 1969, the same being Arkansas Statute 11-655, is hereby amended to read as follows:

"Section 100. Record of trial. (a) Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the president and the military judge if one is assigned. If the record cannot be authenticated by either the president or the military judge by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the military judge are unavailable, the record shall be authenticated by two members. A record of the proceedings of a trial in which the sentence adjudged includes a bad conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a complete verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the Governor may by regulation prescribe.

(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court-martial is not required by subsection (a), the accused may buy such a record under such regulations as the Governor may prescribe."

SECTION 14. Act 50 of 1969 is hereby amended by adding an additional section thereto to read as follows:

"Section 208. Appeal to Civilian Courts. (a) When an accused has exhausted all of his rights of review within the organized militia, he may appeal the conviction and sentence of a court-martial to the Arkansas Supreme Court or if Supreme Court Rules provide, to the Court of Appeals.

(b) The proceedings for an appeal shall be initiated by filing a notice of appeal with the State Adjutant General. The notice of appeal shall be served on the State Adjutant General personally or by certified mail. It shall be unnecessary to serve other parties. Any such appeal shall be filed with the State Adjutant General no more than thirty (30) days after the effective date of the sentence under Section 103 of this code.

(c) The record of any court-martial conviction and sentence appealed shall be lodged in the office of the clerk of the court within the time prescribed by law or court rule for filing an appeal of a criminal conviction in a circuit court in this State, and not thereafter, and only after the party appealing has paid to the Adjutant General the costs for preparation of the

transcript and to the court clerk the filing costs.

(d) In all cases of appeal to the Supreme Court or Court of Appeals, the appeal shall be taken on the record in the case, consisting of pertinent documents and papers, any transcript of evidence, and the findings and orders. The appellate jurisdiction of the Supreme Court and Court of Appeals shall extend only to questions of law, as in criminal cases appealed from the circuit courts.

(e) Upon request of the defendant, the State Judge Advocate may appoint an attorney having the qualifications prescribed in Section 73 of this code to represent the defendant in the appeal of his court-martial conviction and sentence to the Supreme Court or Court of Appeals.

(f) Indigent defendants shall have the same right to appointed appellate defense counsel as accused persons not in the military. On an appeal, the State shall be represented by the attorney general of his designate."

SECTION 15. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/ Bookout

