

As Amended by Senate Committee

Session of 2015

SENATE BILL No. 290

By Committee on Ways and Means

3-17

1 AN ACT concerning the Kansas code of military justice; relating to
2 commanding officer's nonjudicial punishment; amending K.S.A. 48-
3 2301 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 48-2301 is hereby amended to read as follows: 48-
7 2301. ~~(a) Under such regulations as the governor may prescribe, any~~
8 ~~commanding officer may, in addition to or in lieu of admonition or~~
9 ~~reprimand, impose one of the following disciplinary punishments for~~
10 ~~minor offenses without the intervention of a court-martial:~~

11 ~~(1) Upon an officer of the commanding officer's command:~~

12 ~~(A) Withholding of privileges for not more than two consecutive~~
13 ~~weeks;~~

14 ~~(B) restriction to certain specified limits, with or without suspension~~
15 ~~from duty, for not more than two consecutive weeks; or~~

16 ~~(C) if imposed by the governor, the adjutant general, or the~~
17 ~~commanding general of a brigade, or the commanding officer of a separate~~
18 ~~group or battalion, a fine or forfeiture of pay and allowances of not more~~
19 ~~than \$125;~~

20 ~~(2) upon other military personnel of the commanding officer's~~
21 ~~command:~~

22 ~~(A) Withholding of privileges for not more than two consecutive~~
23 ~~weeks;~~

24 ~~(B) restriction to certain specified limits, with or without suspension~~
25 ~~from duty, for not more than two consecutive weeks;~~

26 ~~(C) extra duties for not more than 14 days, which need not be~~
27 ~~consecutive, and for not more than two hours per day, holidays included;~~

28 ~~(D) reduction to next inferior grade if the grade from which demoted~~
29 ~~is within the promotion authority of the officer imposing the reduction of~~
30 ~~any officer subordinate to the one who imposes the reduction;~~

31 ~~(E) if imposed by an officer of the grade of major or above: (i) The~~
32 ~~punishment authorized pursuant to subsection (a)(2)(A) through (a)(2)(D)~~
33 ~~above; or (ii) a fine or forfeiture of pay of not more than \$50.~~

34 ~~(b) The governor may, by regulation, place limitations on the powers~~
35 ~~granted by this section with respect to the kind and amount of punishment~~
36 ~~authorized and the categories of commanding officers authorized to~~

1 exercise those powers.

2 (e) ~~An officer in charge may impose on enlisted members assigned to~~
3 ~~the unit or element of which the officer is in charge the punishments~~
4 ~~authorized pursuant to subsections (a)(2)(A) through (a)(2)(D).~~

5 (d) ~~The officer who imposes the punishment authorized in subsection~~
6 ~~(b), or such officer's successor in command, may at any time suspend~~
7 ~~probationally any part or amount of the unexecuted punishment imposed~~
8 ~~and may suspend probationally a reduction in grade or a forfeiture~~
9 ~~imposed under subsection (b), whether or not executed. In addition such~~
10 ~~officer may at any time remit or mitigate any part or amount of the~~
11 ~~unexecuted punishment imposed and may set aside in whole or in part the~~
12 ~~punishment, whether executed or unexecuted, and restore all rights,~~
13 ~~privileges and property affected. Such officer may also mitigate reduction~~
14 ~~in grade to a fine or forfeiture of pay. When mitigating extra duties to~~
15 ~~restriction the mitigated punishment shall not be for a greater period than~~
16 ~~the punishment mitigated. When mitigating reduction in grade to fine or~~
17 ~~forfeiture of pay, the amount of the fine or forfeiture shall not be greater~~
18 ~~than the amount that could have been imposed initially under this article~~
19 ~~by the officer who imposed the punishment mitigated.~~

20 (e) ~~Except where punishment has been imposed by the governor, a~~
21 ~~person punished under this section who considers his or her punishment~~
22 ~~unjust or disproportionate to the offense may, through the proper channel,~~
23 ~~appeal to the next superior authority. The appeal shall be promptly~~
24 ~~forwarded and decided, but the person punished may in the meantime be~~
25 ~~required to undergo the punishment adjudged. The superior authority may~~
26 ~~exercise the same powers with respect to the punishment imposed as may~~
27 ~~be exercised under subsection (d) by the officer who imposes the~~
28 ~~punishment.~~

29 (f) ~~The imposition and enforcement of disciplinary punishment under~~
30 ~~this section for any act or omission is not a bar to trial by court-martial for~~
31 ~~a serious crime or offense growing out of the same act or omission, and~~
32 ~~not properly punishable under this section; but the fact that a disciplinary~~
33 ~~punishment has been enforced may be shown by the accused upon trial,~~
34 ~~and when so shown shall be considered in determining the measure of~~
35 ~~punishment to be adjudged in the event of a finding of guilty.~~

36 (g) ~~Whenever a punishment of forfeiture of pay is imposed under this~~
37 ~~section, the forfeiture may apply to pay accruing on or after the date that~~
38 ~~punishment is imposed and to any pay accrued before that date.~~

39 (h) ~~Any punishment authorized by this section which is measured in~~
40 ~~terms of days shall, when served in a status other than annual field~~
41 ~~training, be construed to mean regularly scheduled inactive duty training~~
42 ~~days.~~

43 (i) ~~Prior to being informed of the disciplinary action to be taken under~~

1 this section, the person to be punished shall have the right to demand a
2 trial by court-martial for the offense. Punishment may not be imposed
3 upon any member of the state military force under this section if the
4 member has, before the imposition of such punishment, demanded trial by
5 court-martial in lieu of such punishment.

6 (a) (1) Under such regulations as the governor may prescribe, any
7 commanding officer may impose disciplinary punishments for minor
8 offenses without the intervention of a court-martial pursuant to this
9 article. For purposes of this article, commanding officer shall include
10 officers-in-charge.

11 (2) The governor, the adjutant general or an officer of a general or
12 flag rank in command may delegate the powers under this article to a
13 principal assistant who is a member of the state military forces.

14 (b) Any commanding officer may impose upon enlisted members of
15 the officer's command:

16 (1) An admonition;

17 (2) a reprimand;

18 (3) the withholding of privileges for not more than six months, which
19 need not be consecutive;

20 (4) the forfeiture of not more than seven days' pay;

21 (5) a fine of not more than seven days' pay;

22 (6) a reduction to the next inferior pay grade, if the grade from which
23 demoted is within the promotion authority of the officer imposing the
24 reduction or any officer subordinate to the one who imposes the reduction;

25 (7) extra duties, including fatigue or other duties, for not more than
26 14 days, which need not be consecutive; and

27 (8) restriction to certain specified limits, with or without suspension
28 from duty, for not more than 14 days, which need not be consecutive.

29 (c) Any commanding officer of the grade of ~~major (O-4)~~ O-4, or
30 above, may impose upon enlisted members of the officer's command:

31 (1) Any punishment authorized in subsections (b)(1), (2) and (3);

32 (2) the forfeiture of not more than $\frac{1}{2}$ of one month's pay per month
33 for two months;

34 (3) a fine of not more than one month's pay;

35 (4) a reduction to the lowest or any intermediate pay grade, if the
36 grade from which demoted is within the promotion authority of the officer
37 imposing the reduction or any officer subordinate to the one who imposes
38 the reduction, but an enlisted member in a pay grade above
39 ~~specialist/corporal (E-4)~~ E-4 may not be reduced more than two pay
40 grades;

41 (5) extra duties, including fatigue or other duties, for not more than
42 45 days, which need not be consecutive; and

43 (6) restriction to certain specified limits, with or without suspension

1 *from duty, for not more than 60 days, which need not be consecutive.*

2 *(d) The governor, the adjutant general, an officer exercising general*
3 *court-martial convening authority or an officer of a general or flag rank*
4 *in command may impose:*

5 *(1) Upon officers of the officer's command, any punishment*
6 *authorized in subsections (c)(1), (2), (3) and (6) and arrest in quarters for*
7 *not more than 30 days, which need not be consecutive; and*

8 *(2) upon enlisted members of the officer's command, any punishment*
9 *authorized in subsection (c).*

10 *(e) Whenever any of those punishments are combined to run*
11 *consecutively, the total length of the combined punishment cannot exceed*
12 *the authorized duration of the longest punishment in the combination, and*
13 *there must be an apportionment of punishments so that no single*
14 *punishment in the combination exceeds its authorized length under this*
15 *article.*

16 *(f) Prior to the offer of non-judicial punishment, the commanding*
17 *officer shall determine whether arrest in quarters or restriction shall be*
18 *considered as punishments. If the commanding officer determines that the*
19 *punishment options may include arrest in quarters or restriction, the*
20 *accused shall be notified of the right to demand trial by court-martial. If*
21 *the commanding officer determines that the punishment options will not*
22 *include arrest in quarters or restriction, the accused shall be notified that*
23 *there is no right to trial by court-martial in lieu of non-judicial*
24 *punishment.*

25 *(g) The officer who imposes the punishment, or the successor in*
26 *command, may, at any time, suspend, set aside, mitigate or remit any part*
27 *or amount of the punishment and restore all rights, privileges and property*
28 *affected. The officer also may mitigate punishments as follows: (1)*
29 *Reduction in grade to forfeiture of pay; (2) arrest in quarters to*
30 *restriction; or (3) extra duties to restriction. The mitigated punishment*
31 *shall not be for a greater period than the punishment mitigated. When*
32 *mitigating reduction in grade to forfeiture of pay, the amount of the*
33 *forfeiture shall not be greater than the amount that could have been*
34 *imposed initially under this article by the officer who imposed the*
35 *punishment mitigated.*

36 *(h) A person punished under this article who considers the*
37 *punishment unjust or disproportionate to the offense may, through the*
38 *proper channel, appeal to the next superior authority within 15 days after*
39 *the punishment is either announced or sent to the accused, as the*
40 *commander may determine. The appeal shall be promptly forwarded and*
41 *decided, but the punishment shall be stayed until final action is taken on*
42 *the appeal. The superior authority may exercise the same powers with*
43 *respect to the punishment imposed as may be exercised under subsection*

1 *(g) by the officer who imposed the punishment. Before acting on an appeal*
2 *from a punishment, the authority that is to act on the appeal will refer the*
3 *case to a judge advocate for consideration and advice.*

4 *(i) The imposition and enforcement of disciplinary punishment under*
5 *this article for any act or omission is not a bar to trial by court-martial or*
6 *a civilian court of competent jurisdiction for a serious crime or offense*
7 *growing out of the same act or omission and not properly punishable*
8 *under this article; but the fact that a disciplinary punishment has been*
9 *enforced may be shown by the accused upon trial and, when so shown, it*
10 *shall be considered in determining the measure of punishment to be*
11 *adjudged in the event of a finding of guilty.*

12 *(j) Whenever a punishment of forfeiture of pay is imposed under this*
13 *article, the forfeiture may apply to pay accruing before, on or after the*
14 *date that punishment is imposed.*

15 *(k) Regulations may prescribe the form of records to be kept of*
16 *proceedings under this article and may prescribe that certain categories of*
17 *those proceedings shall be in writing.*

18 Sec. 2. K.S.A. 48-2301 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.