

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

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BILL: SB 770

INTRODUCER: Senator Burgess

SUBJECT: Military Affairs

DATE: March 8, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Caldwell	MS	<b>Favorable</b>
2.	_____	_____	GO	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 770 revises several provisions relating to courts-martial of the Florida National Guard (FLNG), reduces the minimum qualifications for a candidate for Adjutant General or Assistant Adjutant General, and specifies that the Adjutant General is the commanding general of the (FLNG) with authority to convene a general or special courts-martial.

Regarding courts-martial, the bill provides:

- The Uniform Code of Military Justice (UCMJ), together with chapter 250 of the Florida Statutes, is to be referred to as the Florida Code of Military Justice (FCMJ).
- Members of the FLNG are subject to discipline under the FCMJ while in civilian status, as well as while in military status (as under current law).
- Jurisdiction over a servicemember is established by his or her membership in the FLNG; it is not dependent, for instance, on the member's status at the time of the offense.
- A court-martial has subject matter jurisdiction over an offense if a nexus exists between an offense and the state military force.
- A civilian court has jurisdiction over a nonmilitary offense of both the FCMJ and local criminal law.
- The military judge in a general or special court-martial must be qualified by attendance at Judge Advocate General school or be certified as qualified by the Adjutant General—current law requires both.
- The military judge in a summary court-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Authority or any higher authority.
- Increased possible punishments in a general court-martial.
- Modified punishment options in special and summary courts-martial.

Additionally, the bill provides more nonjudicial punishment options, greater specificity for existing punishment options, and authorization for a commander to suspend punishment.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Overview

The Florida National Guard (FLNG) is the organized militia of the state.<sup>1</sup> Its mission includes maintaining readiness to support national and state security efforts, as well as leading or assisting in humanitarian and logistical operations. These operations include hurricane preparation and recovery, as well as the pandemic response. The Governor is the commander in chief of the FLNG and the Adjutant General is its chief of staff.<sup>2</sup> The FLNG has an Army component and an Air component, each of which has an Assistant Adjutant General who is also its Commander.<sup>3</sup>

A servicemember of the FLNG who violates the Uniform Code of Military Justice (UCMJ) is subject to discipline in a military court called a court-martial.<sup>4</sup> There are three main types of court-martial: general, special, and summary.<sup>5</sup> The first two hear the more serious cases, and a servicemember who is found guilty and is sentenced in a general or special court-martial may appeal his or her case to the First District Court of Appeal.<sup>6</sup>

### Adjutant General

The Adjutant General is the head of the Department of Military Affairs<sup>7</sup> and the chief of staff of the Florida National Guard. The Adjutant General is appointed by the Governor, subject to Senate confirmation.<sup>8</sup> The Adjutant General may, upon delegation of authority by the Governor, convene a general court-martial.<sup>9</sup>

The Florida Statutes provide the minimum qualifications for a candidate to be Adjutant General.<sup>10</sup> He or she must be a federally recognized officer of the Florida National Guard who has served for the preceding 5 years.<sup>11</sup>

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<sup>1</sup> Section 250.02(2), F.S. The nonorganized militia is composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States. FLA. CONST. art. X, sec. 2(a).

<sup>2</sup> Section 250.06(1), F.S.

<sup>3</sup> Florida National Guard, *Assistant Adjutant General—Army and Commander*, <https://fl.ng.mil/leadership/Pages/Assistant-Adjutant-General-Army.aspx> (last visited March 3, 2021); Florida National Guard, *Assistant Adjutant General—Air and Commander*, <https://fl.ng.mil/leadership/Pages/Assistant-Adjutant-General-Air.aspx> (last visited March 3, 2021).

<sup>4</sup> Section 250.35, F.S.

<sup>5</sup> Section 250.35, F.S.

<sup>6</sup> Section 250.35(10)(b), F.S.

<sup>7</sup> Section 250.05(3), F.S. The Department of Military Affairs provides management oversight and administrative support to the FLNG. Florida National Guard, *Florida Department of Military Affairs*, <https://fl.ng.mil/about/Pages/Florida-Department-of-Military-Affairs.aspx>, (last visited Feb. 18, 2021).

<sup>8</sup> Section 250.10(1), F.S.

<sup>9</sup> Section 250.06(6), F.S.

<sup>10</sup> See s. 250.10(1), F.S.

<sup>11</sup> *Id.*

## Courts-Martial

### *Overview*

A court-martial is a military tribunal authorized by the Florida Constitution and the Florida Statutes to adjudicate cases against members of the Florida National Guard.<sup>12</sup> It is an administrative proceeding of the executive branch.<sup>13</sup> A court-martial may be “general,” “special,” or “summary,” depending on the severity of the alleged offense in a given case. The types of court-martial also vary in terms of the punishments authorized and process due the accused.

### *Basis in Florida Law*

The Florida Constitution provides that the “disciplining of the militia” may be provided by law.<sup>14</sup> Moreover, the Constitution requires this discipline to “conform to the appropriate United States army or air force regulations and usages.”<sup>15</sup>

Accordingly, the Florida Statutes provide that federal “laws that relate to the Florida National Guard . . . are part of the military laws of the state.”<sup>16</sup> And s. 250.03, F.S., adopts the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial for use by the Florida National Guard.<sup>17</sup>

### *Jurisdiction*

A court-martial may try a member of the FLNG for any crime or offense made punishable in the UCMJ,<sup>18</sup> regardless of where the member was serving at the time of the offense.<sup>19</sup> However, a service member may not be tried for offenses committed while in civilian status.<sup>20</sup>

### *Searches*

Neither the Florida Statutes nor the UCMJ specify who may authorize a search or which areas may be searched. However, the Military Rules of Evidence authorize a commander or military judge to issue a search authorization, which is the military law equivalent of a search warrant.<sup>21</sup> Under the Fourth Amendment to the Constitution, a search generally must be conducted pursuant to a search warrant that is supported by probable cause.<sup>22</sup>

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<sup>12</sup> See s. 250.35, F.S.; FLA. CONST. art X, sec. 2.

<sup>13</sup> See *Waterman v. State*, 654 So. 2d 150, 152-53 (Fla. 1st DCA 1995).

<sup>14</sup> FLA. CONST. art X, sec. 2.

<sup>15</sup> *Id.*

<sup>16</sup> Section 250.03, F.S.

<sup>17</sup> Section 250.35, F.S.

<sup>18</sup> Section 250.35(2), F.S. However, a commissioned officer, warrant officer, or cadet may not be tried by summary courts-martial. *Id.*

<sup>19</sup> See s. 250.351(1), F.S.

<sup>20</sup> See *Id.*; see generally, *U.S. v. Wolpert* 75 M.J. 777, 781 (U.S. Army Ct. of Mil. App. 2016).

<sup>21</sup> Mil. R. Evid. 316.

<sup>22</sup> See *California v. Carney*, 471 U.S. 386, 390-91 (1985).

### ***General Court-Martial***

A general court-martial hears the most serious cases.<sup>23</sup> It may be convened by order of the President of the United States, the Governor, or the Adjutant General as delegated by the Governor.<sup>24</sup> In a general court-martial, the defendant has the right to be tried by a judge and a panel of officers.<sup>25</sup> However, a defendant may waive his or her right to a trial by panel and may request a trial by only a judge.<sup>26</sup>

If convicted in a general court-martial, a defendant could face one or more of the following punishments:

- A fine of \$500 or less.
- Confinement of 200 days or less.
- Forfeiture of all pay and allowances.
- Reprimand, dismissal, or dishonorable discharge from the service.
- Reduction to the lowest enlisted grade or any intermediate grade for enlisted personnel.<sup>27</sup>

### ***Special Court-Martial***

Another type of court-martial is the special court-martial. These come in two types, one that has bad conduct discharge authority and one that does not.

The first type may be convened by the commander of each major command of the FLNG who is not in active service of the United States, or his or her superior commander.<sup>28</sup> This type of court-martial may impose the same punishments as a general court-martial, except that it may not impose a fine of over \$300 or confinement exceeding 100 days.<sup>29</sup>

Compared to a special court-martial that has discharge authority, one without that authority may be convened by a much larger class of persons.<sup>30</sup> More specifically, this court-martial may be convened by the commanding officer of any place where troops are on duty, such as a fort or air base.<sup>31</sup> Additionally, the commanding officer of any division, brigade, group, regiment, battalion, wing, or squadron may convene a special court-martial for his or her command.<sup>32</sup>

### ***Summary Court-Martial***

The last type of court-martial is a summary court-martial, which hears the least-serious offenses.<sup>33</sup> It may be convened by a person who is authorized to convene a general or special court-martial, such as the commander of a major command of the FLNG.<sup>34</sup> This type of court-

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<sup>23</sup> Additionally, an enlisted defendant may request that the panel include enlisted members. *Id.*

<sup>24</sup> Section 250.35(3), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Section 250.35, F.S.

<sup>28</sup> Section 250.35(5), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *See s. 250.35(6), F.S.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* A superior commander also may convene this type of court-martial “when advisable.” *Id.*

<sup>33</sup> Section 250.35(7), F.S.

<sup>34</sup> *See s. 250.35(5), F.S.*

martial may also be convened by the commanding officer of each battalion, higher headquarters, or similar type unit may when he or she is not in active duty of the United States.

A summary court-martial may impose one or more of the following punishments:

- A fine of \$200 or less per offense.
- Confinement of 25 days or less.
- Forfeiture of pay and allowances.
- Reduction by one grade.<sup>35</sup>

### *Appeals*

A servicemember who is found guilty and is sentenced to imprisonment under a general or special court-martial may appeal the decision to the First District Court of Appeal.<sup>36</sup> Moreover, any “dismissal of a general or special court-martial by the military judge which does not violate the defendant’s constitutional rights may be appealed by the Florida National Guard to the First District Court of Appeal.”<sup>37</sup>

In a summary court-martial, a servicemember may appeal a finding of guilt or sentence to the convening authority. And a servicemember who is sentenced to imprisonment may appeal the finding of guilt or the sentence to the Adjutant General.<sup>38</sup>

### *Nonjudicial Punishment*

As an alternative to a court-martial, a commander may impose nonjudicial punishment. This punishment may not exceed:

- Oral or written reprimand.
- Extra duty for 14 days.
- Restriction for 14 days.
- Fines of \$200.
- Reduction by one grade of a member whom the commander had the authority to promote.<sup>39</sup>

These punishments may be combined, however a combination of extra duty and restriction may not exceed 14 days.<sup>40</sup>

## **III. Effect of Proposed Changes:**

The bill revises several provisions relating to courts-martial of the Florida National Guard (FLNG), eases the minimum qualifications for a candidate for Adjutant General or Assistant Adjutant General, and provides that the Adjutant General is the commanding general of the (FLNG) with authority to convene general or special courts-martial.

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<sup>35</sup> Section 250.35(7), F.S.

<sup>36</sup> Section 250.35(10)(a), F.S.

<sup>37</sup> Section 250.35(1)(b), F.S.

<sup>38</sup> Section 250.35(9), F.S.

<sup>39</sup> Section 250.35(8), F.S.

<sup>40</sup> *Id.*

Under the bill, a candidate for Adjutant General must have served in the Florida National Guard for 5 years, rather than for the preceding 5 years. A candidate for Assistant Adjutant General must have served in the FLNG for 3 years, instead of the preceding 3 years.

Regarding courts-martial, the bill provides:

- The Uniform Code of Military Justice (UCMJ), together with chapter 250 of the Florida Statutes, is to be referred to as the Florida Code of Military Justice (FCMJ).
- Members of the FLNG are subject to discipline under the FCMJ while in civilian status, as well as while in military status; under current law, members are subject to the military law only while in military status.
- Jurisdiction over a servicemember is established by his or her membership in the FLNG (regardless of their military or civilian status at the time of offense).
- The Adjutant General, his or her designee, or a military judge may issue and execute a search authorization for a place that the FLNG or Department of Military Affairs has control over.
- A court-martial has subject matter jurisdiction over an offense if a nexus exists between an offense and the state military force.
- A civilian court has primary jurisdiction over a nonmilitary offense of both the FCMJ and local criminal law.
- A member of the FLNG may be subjected to a court-martial under the FCMJ for an offense committed while in the service of the United States, but only after the commander who has authority to prosecute the offense under the UCMJ declines to prosecute for the offense.
- The Adjutant General may convene a general court-martial—current law requires the Governor to have delegated this authority to the Adjutant General.
- The military judge in a general or special court-martial must be qualified by attendance at Judge Advocate General school or be certified as qualified by the Adjutant General—current law requires both.
- The military judge in a summary court-martial must be a commissioned officer who is appointed by the Summary Courts-Martial Authority or any higher authority.
- An increase in the maximum term of confinement for a servicemember found guilty in a general court-martial from 200 days to 367 days.

Additionally, for a person found guilty in a special court-martial authorized to adjudicate a bad conduct discharge, the bill increases the maximum fine from \$300 to \$400, and it provides that a term of pay forfeiture may not exceed 1 year.

In a special court-martial not authorized to adjudicate a bad conduct discharge, the bill limits a term of forfeiture of pay and allowances to 60 days or less.

Regarding possible punishments in a summary court-martial, the bill provides:

- A term of forfeiture of pay and allowances may not exceed 60 days.
- The presiding officer may reduce the guilty person's pay by two grades—current law allows for a reduction of only one pay grade.
- A person may be subjected to confinement and a fine; current law prohibits this combination.

Regarding nonjudicial punishments, the bill provides greater specificity as to which commanders may issue punishment with respect to varying classes of servicemembers. The bill also provides

that a servicemember may have his or her rank reduced by nonjudicial punishment and specifies who may do so with regard to a given servicemember. A member may also have his or her pay grade reduced by two grades, as opposed to one as under current law, or may have his or her pay forfeited for 14 days or less.

In several respects, the bill restricts or provides greater specificity for several punishment options. For example, where current law provides that a guilty service member may be subject to “restriction,” the bill specifies that this is restriction to certain places, such as the armory.

The bill provides that a commander may suspend a nonjudicial punishment.

The bill also makes technical revisions, updates current job titles and removes obsolete job titles in ss. 110.205 and 121.055, F.S.

The bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 110.205, 121.055, 250.10, 250.35, 250.351, 250.36, 250.375, and 250.40.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.