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# Senate Veterans Affairs & Emergency Preparedness Committee

Senator Lisa Baker, Chair

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## **BILL SUMMARY**

**Senate Bill 1442, Printer's No. 2019**

**Sponsor: Senator Mary Jo White**

### **SUMMARY:**

This bill updates the Pennsylvania Code of Military Justice (PCMJ), which enforces order and discipline in the Pennsylvania National Guard. The Code has not been comprehensively updated since 1975. It applies to Pennsylvania National Guard personnel (nearly 20,000 men and women) who are not in active federal service under Title 10 of the U.S. Code. The state code parallels the federal Uniform Code of Military Justice.

### **EXISTING LAW:**

The current code contains many archaic, outmoded and repealed federal limitations on punishments. Many provisions date back to the state code of 1949, and a 1916 federal law that has since been repealed. This bill is adapted from the Model State Code of Military Justice, which the U.S. Congress urged the Secretary of Defense to develop in 2002.

### **ANALYSIS:**

Key revisions include:

- **Maximum punishments.** The maximum sentence to confinement for a general court-martial is five years and the maximum fine is \$10,000. Other punishments, including punitive discharge and forfeiture of pay, are similar to those in current law. The changes to maximum fines and confinement are reflected in changes for penalties for special and summary courts-martial and non-judicial punishment. In one deviation from the U.S. Model Code, which sets a maximum punishment of ten years and sets no dollar limit on fines, SB 1442 opts for five years and a \$10,000 maximum fine.
- **Jurisdiction.** The legislation clarifies and improves upon the explanations of the circumstances where court-martial jurisdiction applies.

- Non-judicial punishment. Section 5301 adopts the wording of the Model Code on non-judicial punishment. The accused has the right to submit matters in defense, extenuation and mitigation, and to appeal a non-judicial punishment to the next higher commander.
- Review and appeals. The bill retains a Board of Review to review cases referred to it and provides that appeals of final courts-martial convictions for generals or special courts-martial will go to the Superior Court of Pennsylvania in the same manner as convictions by courts of common pleas.
- It also contains a provision providing for appeals by the state. Under current law, ambiguity exists over which court has the power to hear appeals of final court-martial.
- Military offenses. All “non-military” offenses are subject to the general jurisdictional requirements, and courts-martial will not be initiated for such offenses if civilian courts are able to handle them. A new provision on wrongful use or possession of controlled substances is added, based on the Model Code.
- Absent without leave (AWOL). The current code allows commanders to charge AWOL as an offense under the code OR as a summary offense. The new code retains the current option, but most AWOL cases are expected to be charged under the PCMJ.
- Mental responsibility and incapacity. New provisions are included on mental responsibility and lack of mental capacity.
- State Military Justice Fund. The legislation provides for the establishment of a special non-lapsing fund to be used for deposit of appropriations as well as fines, forfeitures and penalties assessed under the code and to pay for the costs of administering the military justice system.

Twelve states have already enacted their own versions of the Model State Code, which was drafted by a panel of National Guard Judge Advocates and endorsed by the American Bar Association in 2011. SB 1442 is supported by Pennsylvania National Guard Association, the Department of Military and Veterans Affairs (DMVA), and the Pennsylvania Bar Association.

**EFFECTIVE DATE:**

This act takes effect in six months.