

IC 10-16-9

Chapter 9. Court-Martial Procedures

IC 10-16-9-1

Uniform code of military justice; trial by civil authorities; killing and injuring during riots; governor's duties

Sec. 1. (a) Except as otherwise provided, if the Indiana national guard is in active service on behalf of the state:

- (1) in case of:
 - (A) public disaster;
 - (B) riot;
 - (C) tumult;
 - (D) breach of the peace; or
 - (E) resistance of process;
- (2) whenever called upon in aid of civil authorities;
- (3) under martial law;
- (4) at encampments or any scheduled training periods or drills for which a member is entitled to pay, within or outside Indiana; or
- (5) upon any other duty requiring the entire time of the Indiana national guard, or any part of the Indiana national guard;

the uniform code of military justice governing the armed forces of the United States with any subsequent change approved by the adjutant general as applicable to Indiana military law is in force and regarded as a part of this article for the Indiana national guard until the Indiana national guard is relieved from duty.

(b) Confinement in a penitentiary under this article must be in a penitentiary in Indiana. An offense committed by the member of the national guard while in active service may be tried and punished by a court-martial lawfully appointed.

(c) Except as provided in subsections (d) and (e), if the accused member of the Indiana national guard is found guilty, the convicted member shall be punished according to the uniform code of military justice and the rules and regulations governing the United States armed forces but within the limits prescribed by federal law for court-martial in the national guard.

(d) If the offense charged is also an offense by the civil law of Indiana, the officer whose duty it is to approve the charge may order the person charged to be turned over to the civil authorities for trial.

(e) Punishment under the rules and articles of the uniform code of military justice that extend to the taking of life may not be inflicted, except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist, or to be threatened or anticipated.

(f) If a:

- (1) person resisting the laws of the state or unlawfully or riotously assembled for that purpose; or
 - (2) bystander or other person in the vicinity;
- is killed or injured by state forces called into active service under this

article and acting in obedience to the orders of its commanding officer, the officer or member of the Indiana national guard is not subject to indictment, trial, or any civil process other than by a court-martial, to be convened for that purpose by the governor.

(g) The finding of the court-martial, when submitted to and approved by the governor, in accordance with the uniform code of military justice, is final and conclusive on all persons.

(h) If an indictment is found or information filed against the person, a writ or other process may not be issued by the clerk of the court where the indictment was returned or information filed against the defendant. The clerk shall immediately transmit to the governor a certified copy, and, upon the receipt of the certified copy, the governor shall cause to be convened a court-martial to determine the truth of the charges and the punishment, if any, to be inflicted.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-2

Military courts

Sec. 2. (a) The military courts of Indiana shall be organized as follows:

- (1) General court-martial.
- (2) Special court-martial.
- (3) Summary court-martial.

(b) The courts shall be constituted, have cognizance of the same subject, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the armed forces of the United States. The proceedings of the courts-martial must follow the forms and modes of procedure prescribed for the courts governing the armed forces of the United States and as approved by the adjutant general.

(c) A general court-martial may be convened by orders of the governor and may try a person subject to military law. The general court-martial may impose fines of not more than two hundred dollars (\$200) and sentence a person to:

- (1) a forfeit of pay and allowances;
- (2) a reprimand;
- (3) dismissal or dishonorable discharge from the services;
- (4) reduction of noncommissioned officers to the ranks; or
- (5) any combination of two (2) or more of the punishments described in subdivisions (1) through (4).

(d) The adjutant general or the commanding officer of each camp or other place, division, regiment, separate battalion, air squadron, group, or other detached command may appoint a special court-martial for that command. However, a special court-martial may be appointed by superior authority if the superior authority considers it desirable. The special court-martial:

- (1) may try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States or the state; and

(2) has the same powers of punishment as does a general court-martial, except that fines imposed by the courts may not exceed one hundred dollars (\$100).

(e) The adjutant general or the commanding officer of each camp or other place, division, regiment, battalion, company, air squadron, group, or other detachment of the national guard may appoint for the place or command a summary court to consist of one (1) officer, who may administer oaths and try the enlisted persons of the place or command for breaches of discipline and violations of laws when governing the organizations. The court, when satisfied of the guilt of the soldier, may:

- (1) impose fines of not more than twenty-five dollars (\$25) for any offense;
- (2) sentence noncommissioned officers to reduction in rank; and
- (3) sentence to forfeiture of pay and allowances.

The proceedings of the court must be informal and the minutes must be the same as prescribed for summary courts of the armed forces of the United States.

(f) All courts-martial of the Indiana national guard, including summary courts, may sentence to confinement instead of imposing an authorized fine if the sentence of confinement does not exceed one (1) day for each one dollar (\$1) of fine authorized.

(g) A sentence of dismissal from the service or dishonorable discharge imposed by a national guard court-martial may not be executed until approved by the governor.

(h) A conviction by court-martial that has been approved by the convening authority under this article may be appealed to a military court of appellate review. The military court of appellate review must consist of three (3) Indiana national guard judge advocates appointed to the military court of appellate review by the adjutant general.

(i) Presidents of courts-martial and summary courts officers may do the following:

- (1) Issue warrants to arrest an accused person and to bring the person before the court for trial if the person has disobeyed an order in writing from the convening authority to appear before the court. A copy of the charge must be delivered to the accused with the order.
- (2) Issue subpoenas duces tecum.
- (3) Enforce by attachment attendance of witnesses and the production of books and papers.
- (4) Sentence for a refusal to be sworn or to answer as provided in action before civil courts.

(j) All processes of a court-martial, when it is impracticable to be executed by the military forces of the state, shall be:

- (1) brought in the name of the state; and
- (2) executed by the civil officers designated by the president of the court-martial or summary court officer issuing the process.

The designated civil officer shall execute all processes and return the processes to the officer who issued the processes. The civil officer

shall be paid the fees and allowances provided for like processes in civil actions of the state. The fees shall be charged in case of conviction of the accused as a part of the penalty of the offense of which the accused may be convicted whether the punishment for the offense is imprisonment or a fine, or both. The payment of the costs in addition to the payment of the fine imposed shall be enforced by imprisonment until the payment is satisfied, at a rate of one dollar (\$1) per day of the costs or fine, or both.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-3

Collection of fines

Sec. 3. (a) Fines may be collected in the following manner:

(1) By the retention of any pay or allowances due or to become due from the state.

(2) By commitment to a jail designated by the reviewing authority until the fine is paid or until one (1) day is served for each one dollar (\$1) of the fine imposed.

(3) By payment to the local armory board assigned to the convicted soldier's unit. The local armory board shall immediately transmit the payment to the state armory board, and the sums are appropriated continuously for the purposes of IC 10-16-3-11. It is sufficient to record upon the payroll opposite the name of the person fined a notation of the sentence of the court-martial and the date of approval of the sentence, together with the name and rank of the reviewing authority.

(b) A sentence of imprisonment imposed by a court-martial during active service or at camps of instruction shall be carried out by confinement in a guardhouse, tent, or other places designated by the reviewing authority. A sentence of imprisonment imposed by court-martial upon persons not in active service or at camps of instruction shall be carried out by confinement in a jail to be designated by the reviewing authority.

As added by P.L.2-2003, SEC.7. Amended by P.L.115-2003, SEC.19; P.L.38-2011, SEC.11.

IC 10-16-9-4

Fines; confinement until paid

Sec. 4. If a fine is assessed by a court-martial against a member of the Indiana national guard to whom pay is not due or about to become due, the member of the Indiana national guard fails or refuses to make payment to the treasurer of the state and the proceedings of the court have been approved by the reviewing authority, the reviewing authority in the case of a general or special court-martial, or the summary court officer in the case of a summary court-martial, shall issue a writ in a form approved by the adjutant general for the confinement of the member of the Indiana national guard until the:

(1) fine has been paid; or

(2) member has served one (1) day for each one dollar (\$1) of

the fine imposed and costs of the action accrued.
As added by P.L.2-2003, SEC.7.

IC 10-16-9-5

Sheriffs; order of confinement

Sec. 5. If a sentence of imprisonment is to be served in a place other than in a guardhouse or tent, the reviewing authority in the case of a general or special court-martial and the summary court officer in the case of a summary court-martial shall issue to the sheriff of the county where the confinement has been ordered by the reviewing authority an order of confinement in a form approved by the adjutant general.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-6

Disciplinary punishment

Sec. 6. (a) The commanding officer of any detachment, company, or other unit or organization may impose disciplinary punishment upon any enlisted member of the officer's command.

(b) An officer exercising command normally exercised by a general officer may impose disciplinary punishment upon any warrant or commissioned officer of the exercising officer's command.

(c) A punishment imposed by authority of this section may include the following:

(1) Admonition.

(2) Reprimand.

(3) Withholding privileges for up to seven (7) twenty-four (24) hour duty days.

(4) Restriction to specific area limits for up to seven (7) twenty-four (24) hour duty days.

(5) Imposition of a fine of not more than two-thirds (2/3) of one (1) month's pay to which the member would have been entitled during the month of the offense.

(d) A commanding officer may also:

(1) order a member of the officer's command to be confined under correctional custody for not more than eight (8) days;

(2) reduce the member's rank to the next inferior grade; or

(3) order a member confined and reduce the member's rank as provided in subdivisions (1) and (2).

However, only the commanding officer who holds promotion authority over the member charged with an offense may prescribe the punishment of correctional custody, fine, or reduction in rank.

(e) Fines shall be collected as directed under section 3 of this chapter.

(f) Confinement shall be carried out in compliance with sections 5 and 11 of this chapter.

(g) This section may not be construed to be a waiver of the right to trial by court-martial.

(h) A sentence may not be executed until the right of appeal has

been exhausted or waived as prescribed in the uniform code of military justice.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-7

Arrest of members

Sec. 7. (a) Officers, warrant officers, and enlisted persons of the Indiana national guard may be placed in arrest by their military superiors for violations of military offenses committed during periods of authorized military duty.

(b) If any member of the Indiana national guard fails or refuses to report to the member's appointed place of duty, the commanding officer may:

- (1) arrest or cause to be arrested the member; and
- (2) have the member brought before the commanding officer at the member's unit or organization headquarters.

(c) If military personnel are not available to make the arrest or if the commanding officer considers it advisable, the commanding officer may issue a warrant to any sheriff, constable, or other law enforcement officer authorized to serve warrants of arrest under civil law. The law enforcement officer shall serve the warrant in the same manner as other warrants of arrest and make return of the warrant to the commanding officer issuing the warrant.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-8

Marshals

Sec. 8. (a) The president or military judge of a general and a special court-martial and a summary court officer may each appoint by warrant and at any time remove one (1) or more marshals. A marshal shall do the following:

- (1) If ordered by the president of a general or special court-martial or summary court officer, execute any process, mandate, or order issued by the president or court or officer.
- (2) Perform all acts and duties authorized to be performed by any sheriff, marshal, or constable under this article.

(b) A commanding officer imposing disciplinary punishment under section 6 of this chapter may request the summary court officer having jurisdiction over the unit to appoint a marshal to carry out the process, mandate, or order issued by the commanding officer.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-9

Civil proceedings against military members preferring charges; sentences or executing process and writs

Sec. 9. An action on civil proceeding may not be presented against:

- (1) any member of the armed forces of Indiana who prefers charges against any person subject to military discipline; or

(2) any member of a military court or officer or person acting under the court's authority or reviewing its proceedings on account of the:

- (A) approval, imposition, or execution of any sentence;
- (B) imposition or collection of a fine or penalty; or
- (C) execution of any warrant, writ, execution, process, or mandate of a military court.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-10

Jurisdiction; presumptions and burden of proof

Sec. 10. The jurisdiction of the courts and boards established by this chapter is presumed, and the burden of proof rests on any person seeking to oust the courts or boards of jurisdiction in any action or proceedings.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-11

Jails; designating place of confinement; sentence served on consecutive day basis

Sec. 11. (a) The reviewing authority shall designate:

- (1) the jail of any county; and
- (2) when ordered out of the state for duty, an appropriate place of confinement;

as the place where any sentence of confinement by a military court shall be executed.

(b) With regard to punishment under section 6 of this chapter, confinement shall be at the county jail designated by the officer holding appellate jurisdiction over the case and having the advice of a staff judge advocate as to the legality of the proceedings. However, at the discretion of the officer holding appellate jurisdiction, short term confinement may be carried out in an acceptable municipal jail.

(c) Unless the commanding officer who ordered the sentence directs otherwise, a sentence of confinement or correctional custody shall be served on a consecutive day basis.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-12

Disorderly conduct in presence of court-martial

Sec. 12. (a) A person connected with the military service:

- (1) shall treat a court-martial with respect; and
- (2) in default of respectful consideration, may be proceeded against by arrest and trial.

(b) A person who is not connected with the military service shall behave with respect and decorum toward a court-martial.

(c) A person who engages in disorderly conduct in the presence of a court-martial commits a Class C infraction.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-13**United States military laws and regulations**

Sec. 13. The general principle and spirit of the military laws and regulations for the government of the armed forces of the United States, when not in conflict with the express provisions of this chapter or the Constitution of the State of Indiana, shall be the guide of commanding officers and courts-martial.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-14**Lack of form not vitiating proceedings**

Sec. 14. A lack of form may not vitiate the proceedings of a court-martial.

As added by P.L.2-2003, SEC.7.

IC 10-16-9-15**Administration of oaths**

Sec. 15. An officer may administer oaths when necessary under this article.

As added by P.L.2-2003, SEC.7.