

## **CHAPTER 37-09 MILITARY COURTS**

### **37-09-01. Military courts.**

The military courts of this state for the national guard are:

1. General courts-martial.
2. Special courts-martial.
3. Summary courts-martial.

### **37-09-02. Powers and procedure of military courts.**

The military courts of this state must be constituted the same, have cognizance of the same subjects, and shall possess the same powers, except as to punishment, as similar courts provided for by the laws and regulations governing the army of the United States. The proceedings of courts-martial of the national guard must follow the forms and modes of procedure prescribed in the Manual for Courts-Martial, United States, 1984 (1998 edition).

### **37-09-03. Court of inquiry - How constituted - Duties.**

Repealed by S.L. 1999, ch. 322, § 11.

### **37-09-04. General courts-martial - Convening - Powers.**

A general court-martial may be convened by order of the governor or the adjutant general. Such court may sentence any member to:

1. A fine not exceeding five hundred dollars for a single offense;
2. Forfeiture of pay and allowances of not more than five hundred dollars for a single offense;
3. A reprimand;
4. Dismissal or bad conduct discharge, or dishonorable discharge;
5. Reduction of an enlisted member to any lower rank;
6. Confinement of not more than one hundred eighty days; or
7. Any combination of these punishments.

### **37-09-05. Special courts-martial - Appointment - Jurisdiction - Punishment.**

The commanding officer, with a rank of at least colonel (0-6), of each garrison, fort, post, camp, or other place, or of any brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for the officer's command. A special court-martial may be appointed in any case by a superior authority when it is deemed desirable by the superior authority. A special court-martial may try any person, except a commissioned officer, subject to the military law, for any crime or offense made punishable by the military laws of the United States, and has the same powers of punishment as a general court-martial except that fines imposed by a special court-martial may not exceed three hundred dollars and a sentence of confinement may not exceed one hundred days. A bad conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel was detailed to represent the accused, and a military judge was detailed to the trial.

### **37-09-06. Summary courts-martial - Appointment - Powers - Proceedings.**

The commanding officer, with a rank of at least colonel (0-6), of each garrison, fort, post, or other place, or of any regiment, corps, detached battalion, company, or other detachment, may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted members of such place or command for breaches of discipline and violations of laws governing such organization. Such court, when satisfied of the guilt of a soldier, may:

1. Impose a fine in an amount not exceeding two hundred dollars for any single offense;
2. Sentence an enlisted member to reduction to the ranks;
3. Sentence an enlisted member to forfeiture of pay and allowances not to exceed two hundred dollars for a single offense; or

4. Any combination of these punishments.

The proceedings of such court must be informal, and the minutes of the court must be the same as those prescribed for summary courts of the United States army.

**37-09-07. Accused may be admitted to bond.**

The presiding officer of a military court may accept a bond for the delivery of the accused upon demand after the final action of the court, and even after the jurisdiction of such court terminates the presiding officer may accept a bond pending the action of the reviewing authority. Such bond, however, may not be less than twice the amount of the maximum sentence which may be imposed for the charge when expressed in terms of fine or forfeiture.

**37-09-08. Commitment to prison or jail pending trial - Bail allowed.**

Whenever an accused person has been arrested for failure to appear before a court-martial for trial as provided in this chapter, the president of the court-martial or the summary court officer to whom the charges have been referred for trial may issue a warrant to a civil officer for the commitment of such person to prison or jail pending trial. In all such cases, the accused must be admitted to bail, the amount of bail fixed, and the surety or sureties thereon approved by the president of the court-martial or by the summary court officer issuing the warrant. In default of bail, such person must be confined pending trial.

**37-09-09. Powers of president of court-martial and summary court officer.**

A president of a court-martial and a summary court officer may:

1. Issue subpoenas.
2. Enforce the attendance of witnesses and the production of books and papers.

**37-09-10. Fines collected remitted to state treasurer - Credited to general fund of national guard.**

All fines imposed by a sentence of a military court must be collected by the presiding officer and remitted to the adjutant general without delay. The adjutant general shall remit them to the state treasurer immediately with a statement of the sources from which they were collected. All sums collected as fines must be credited to the general fund for the maintenance of the national guard.

**37-09-11. Courts-martial sentencing to confinement in lieu of fines - Limitations.**

All courts-martial, including summary courts, may sentence to confinement in lieu of fines authorized to be imposed. Such sentences of confinement, however, may not exceed one day for each dollar of fine authorized.

**37-09-12. Sentence imposing confinement - Execution.**

Any portion of a sentence imposed by a military court that prescribes confinement must be executed in such facility as the reviewing authority may direct. The expenses of such confinement must be borne by the state of North Dakota. A commitment in writing must be executed by the presiding officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but if the confinement is the result of the confirmed action of the reviewing authority, an official copy of the order publishing the sentence of the court must be furnished to the sheriff or jailer.

**37-09-13. Limitations on peacetime sentence of court-martial - Alternatives in complying with sentence.**

Repealed by S.L. 1999, ch. 322, § 11.

**37-09-14. Sentence of court-martial to be approved.**

A sentence of any court-martial is not effective until approved by the convening authority. A sentence of dismissal from the service or dishonorable discharge imposed by a court-martial may not be executed until approved by the governor.

**37-09-15. Warrant may be issued by a president of a court-martial and a summary court officer.**

A president of a court-martial and a summary court officer may issue a warrant to arrest an accused person and to bring that person before the court for trial whenever that person has disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order. A president of a court-martial and a summary court officer may issue a warrant for the arrest and confinement of a convicted person, and any other warrant, writ, or process which may be necessary to enable any such court to carry into full effect the powers vested in it by the laws of the United States and of this state.

**37-09-16. Process, writs, and warrants of military courts - Form - Directed to and executed by civil officers.**

The process, writs, and warrants of the military courts of this state must be similar in form to like process, writs, and warrants issued by civil courts or in such form as the governor may prescribe from time to time in regulations the governor issues. A process, writ, or warrant must be directed to, and executed or served by, any sheriff, member of the state highway patrol, or any peace officer of any county or municipality, and the officer to whom the same is directed shall serve or execute the same in the same manner and to the same extent as a corresponding instrument of a civil court is served or executed and shall make return thereof to the officer who issued the process, writ, or warrant, as the case may be.

**37-09-17. Keeper of municipal or county jails to receive persons committed by military court.**

The keeper of any municipal or county jail shall receive persons committed to the keeper by a military court, and shall confine them in accordance with the direction and sentence of said court.

**37-09-18. Witness and reporter fees.**

Any witness subpoenaed to appear before any military court shall receive the same fees as are provided by law for a witness appearing in a civil court. The reporter of any military court must be paid the same fees for stenographic services as are provided by law for similar services in civil courts.

**37-09-19. Fees of civil officers - Levy, disbursement, and record of costs.**

Fees for services of civil officers performed under the provisions of this chapter must be the same as are provided by law for services of civil officers in civil courts. Costs must be levied and disbursed by the court. Records of all levies and disbursements must be kept in the headquarters of the organization concerned.

**37-09-20. Manner of paying witness fees and court costs.**

All witness fees and court costs incident to or the result of the operation of a military tribunal must be paid by the state treasurer from the general funds available upon appropriate voucher submitted through the channels of the adjutant general's office, after approval by the adjutant general and the governor.

**37-09-21. Action for damages does not lie against member of military court or person complying with order thereof.**

No action or proceeding for damages may be prosecuted or maintained against a member of a military court, nor against any person acting under its authority or reviewing its proceedings, on account of the approval, imposition, or collection of any fine or other penalty or on account of the execution of any warrant, writ, or other process of a military court.