

tached battalion, separate squadron, or other detached command; and

(3) summary courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment.

(c) The convening authorities provided under subsection (b) are in addition to the convening authorities provided under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 608; Pub. L. 100-456, div. A, title XII, §1234(b)(4), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 107-314, div. A, title V, §512(b), Dec. 2, 2002, 116 Stat. 2537; Pub. L. 109-163, div. A, title X, §1057(b)(7), Jan. 6, 2006, 119 Stat. 3442.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|----------------------------|------------------------------|
| 327(a) | 32:92 (1st 46 words). | June 3, 1916, ch. 134, §103, |
| 327(b) | 32:92 (less 1st 46 words). | 39 Stat. 208. |

In subsection (a), the words ‘Federal service’ are substituted for the words ‘service of the United States’.

In subsection (b), the words ‘A general court-martial may sentence to—’ are substituted for the words ‘and such courts shall have the power to impose * * * to sentence’. The words ‘any combination of these punishments’ are substituted for the words ‘or any two or more of such punishments may be combined in the sentences imposed by such courts’.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163 substituted ‘States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands’ for ‘States and Territories, Puerto Rico, and the District of Columbia’.

2002—Pub. L. 107-314 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) In the National Guard not in Federal service, general courts-martial may be convened by the President or by the governor of a State or Territory or Puerto Rico or by the commanding general of the National Guard of the District of Columbia.

“(b) A general court-martial may sentence to—

“(1) a fine of not more than \$200;

“(2) forfeiture of pay and allowances;

“(3) a reprimand;

“(4) dismissal or dishonorable discharge;

“(5) reduction of a noncommissioned officer to the ranks; or

“(6) any combination of these punishments.”

1988—Subsec. (a). Pub. L. 100-456 substituted ‘Territory or Puerto Rico’ for ‘Territory, Puerto Rico, or the Canal Zone.’.

MODELS FOR STATE CODE OF MILITARY JUSTICE AND STATE MANUAL FOR COURTS-MARTIAL

Pub. L. 107-314, div. A, title V, §512(e), Dec. 2, 2002, 116 Stat. 2537, provided that:

“(1) The Secretary of Defense shall prepare a model State code of military justice and a model State manual for courts-martial to recommend to the States for use with respect to the National Guard not in Federal service. Both such models shall be consistent with the recommendations contained in the report that was is-

sued in 1998 by the Department of Defense Panel to Study Military Justice in the National Guard not in Federal Service.

“(2) The Secretary shall ensure that adequate support for the preparation of the model State code of military justice and the model State manual for courts-martial (including the detailing of attorneys and other personnel) is provided by the General Counsel of the Department of Defense, the Secretary of the Army, the Secretary of the Air Force, and the Chief of the National Guard Bureau.

“(3) If the funds available to the Chief of the National Guard Bureau are insufficient for paying the cost of the National Guard Bureau support required under paragraph (2) (including increased costs of pay of members of the National Guard for additional active duty necessitated by such requirement and increased cost of detailed attorneys and other staff, allowances, and travel expenses related to such support), the Secretary shall, upon request made by the Chief of the Bureau, provide such additional funding as the Secretary determines necessary to satisfy the requirement for such support.

“(4) Not later than one year after the date of the enactment of this Act [Dec. 2, 2002], the Secretary shall submit a report on the actions taken to carry out this subsection to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The report shall include proposals in final form of both the model State code of military justice and the model State manual for courts-martial required by paragraph (1), together with a discussion of the efforts being made to present those proposals to the States for their consideration for enactment or adoption, respectively.

“(5) In this subsection, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.”

§ 328. Active Guard and Reserve duty: Governor’s authority

(a) AUTHORITY.—The Governor of a State or the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, with the consent of the Secretary concerned, may order a member of the National Guard to perform Active Guard and Reserve duty, as defined by section 101(d)(6) of title 10, pursuant to section 502(f) of this title.

(b) DUTIES.—A member of the National Guard performing duty under subsection (a) may perform the additional duties specified in section 502(f)(2) of this title to the extent that the performance of those duties does not interfere with the performance of the member’s primary Active Guard and Reserve duties of organizing, administering, recruiting, instructing, and training the reserve components.

(Added Pub. L. 109-364, div. A, title V, §526(a), Oct. 17, 2006, 120 Stat. 2196.)

PRIOR PROVISIONS

A prior section 328, act Aug. 10, 1956, ch. 1041, 70A Stat. 608, related to special courts-martial of the National Guard not in Federal service, prior to repeal by Pub. L. 107-314, div. A, title V, §512(c), Dec. 2, 2002, 116 Stat. 2537, applicable with respect to courts-martial convened after Dec. 2, 2002.

[§§ 329 to 333. Repealed. Pub. L. 107-314, div. A, title V, § 512(c)(1), Dec. 2, 2002, 116 Stat. 2537]

Section 329, act Aug. 10, 1956, ch. 1041, 70A Stat. 608, related to summary courts-martial of National Guard not in Federal service.

Section 330, act Aug. 10, 1956, ch. 1041, 70A Stat. 609, related to confinement instead of fine for a court-martial in the National Guard not in Federal service.