

1 S.177

2 Introduced by Senators Sears and White

3 Referred to Committee on

4 Date:

5 Subject: Internal security and public safety; courts-martial; nonjudicial
6 discipline

7 Statement of purpose of bill as introduced: This bill proposes to allow
8 commanding officers in the Vermont National Guard to impose nonjudicial
9 discipline.

10 An act relating to nonjudicial discipline

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 20 V.S.A. § 946 is added to read:

13 § 946. COMMANDING OFFICER NONJUDICIAL DISCIPLINE

14 (a) A commanding officer may impose discipline for minor military
15 offenses without the intervention of a court-martial in accordance with any
16 regulations issued under this chapter. A member subject to discipline shall not
17 be entitled to a court-martial for a minor military offense that will not involve a
18 restraint on liberty as a punishment. A member subject to discipline shall have
19 the right to a hearing before a nonjudicial discipline panel.

1 (b) A commanding officer may impose upon enlisted members of the
2 officer's command:

3 (1) an admonition;

4 (2) a reprimand;

5 (3) for members who are serving on full-time military orders in excess
6 of 179 days, the forfeiture of up to seven days of pay and, for all others, up to
7 four days of pay;

8 (4) a reduction to the next inferior pay grade, if the grade from which
9 the member is demoted is within the promotion authority of the officer
10 imposing the reduction or any officer subordinate to the one who imposes the
11 reduction; or

12 (5) the imposition of extra duties for up to 14 days, which need not be
13 consecutive.

14 (c) A commanding officer of the grade of major or above may impose upon
15 enlisted members of the officer's command:

16 (1) any discipline authorized in subdivisions (b)(1) and (2) of this
17 section;

18 (2) for members who are serving on full-time military orders in excess
19 of 179 days, the forfeiture of not more than one-half of one month's pay per
20 month for up to two months, and, for all others, up to 14 days of pay;

1 (3) a reduction to the lowest or any intermediate pay grade, if the grade
2 from which the member is demoted is within the promotion authority of the
3 officer imposing the reduction or any officer subordinate to the one who
4 imposes the reduction, but an enlisted member in a pay grade above E-4 may
5 not be reduced more than two pay grades; or

6 (4) for members who are serving on full-time military orders in excess
7 of 179 days, the imposition of extra duties for up to 45 days which need not be
8 consecutive, and, for all others, the imposition of extra duties for up to 14 days
9 which need not be consecutive.

10 (d) Any commanding officer may impose upon officers and warrant officer
11 members of the officer's command disciplines authorized under subdivisions
12 (b)(1) and (2) of this section.

13 (e) The Adjutant and Inspector General may impose upon officers and
14 warrant officers:

15 (1) any discipline authorized in subdivisions (b)(1) and (2) of this
16 section; or

17 (2) for members who are serving on full-time military orders in excess
18 of 179 days, the forfeiture of not more than one-half of one month's pay per
19 month for up to two months, and, for all others, up to 14 days of pay.

20 (f) Whenever any of those imposed disciplines are to be served
21 consecutively, the total length of the combined discipline cannot exceed the

1 authorized duration of the longest discipline in the combination, and there must
2 be an apportionment of disciplines so that no single discipline in the
3 combination exceeds its authorized length.

4 (g) The officer who imposes the discipline or the successor in command
5 may at any time suspend, set aside, mitigate, or remit any part or amount of the
6 discipline and restore all rights, privileges, and property affected. The officer
7 also may mitigate reduction in grade to forfeiture of pay.

8 (h) The mitigated discipline shall not be for a greater period than the
9 original discipline mitigated. When mitigating reduction in grade to forfeiture
10 of pay, the amount of the forfeiture shall not be greater than the amount that
11 could have been imposed initially under this section by the officer who
12 imposed the discipline.

13 (i) A person punished under this section may appeal to the next superior
14 authority within 15 days after the discipline is either announced or notice of the
15 discipline is sent to the accused, as the commander may determine. The appeal
16 shall be promptly forwarded and decided, but the person punished may, in the
17 meantime, be required to undergo the discipline adjudged. The superior
18 authority may exercise the same powers with respect to the discipline imposed
19 as may be exercised under subsection (g) of this section by the officer who
20 imposed the discipline. Before acting on an appeal, the authority may refer the
21 case to a judge advocate for consideration and advice.

1 (j) The imposition and enforcement of discipline under this section for any
2 act or omission is not a bar to trial by court-martial or a civilian court of
3 competent jurisdiction for a serious crime or offense growing out of the same
4 act or omission and not properly punishable under this section. The fact that a
5 discipline has been enforced may be shown by the accused upon trial and,
6 when so shown, it shall be considered in determining the measure of discipline
7 to be adjudged in the event of a finding of guilty.

8 (k) Whenever a discipline of forfeiture of pay is imposed under this
9 section, the forfeiture may apply to pay accruing before, on, or after the date
10 that discipline is imposed.

11 (l)(1) An individual subject to discipline under this section may elect to
12 have his or her case heard before a nonjudicial discipline panel. The
13 commanding officer shall notify the individual, verbally and in writing, of the
14 following:

15 (A) the nature of the alleged wrongdoing;

16 (B) his or her intent to dispose of the matter by nonjudicial
17 discipline; and

18 (C) other nonjudicial discipline procedural rights set forth by
19 regulation.

20 (2) The individual shall have 24 hours to make an election for
21 disposition by the panel.

1 (3) The panel shall consist of three members, appointed by the
2 commander's next higher authority. The members of the panel shall be
3 officers who are senior to the individual requesting the panel. If it is an
4 enlisted member requesting the panel, there shall be at least one enlisted
5 member on the panel but the member must be senior to the enlisted member
6 requesting the panel. The individual requesting the panel may request that at
7 least one member of the panel be of the same sex as the individual and the
8 request shall be honored unless there is no qualified person of the same sex as
9 the individual to serve on the panel. The senior member shall be the chair.
10 The most junior member shall be the recorder and shall record summaries of
11 the proceedings. However, if the nonjudicial discipline is being offered by a
12 general officer, the panel shall consist of three members appointed by the
13 Adjutant and Inspector General with the most senior member being the chair
14 and the most junior member being the recorder, who shall record the
15 summaries of the proceedings.

16 (4) The panel decision shall be by majority vote. The panel has the
17 same authority and responsibility in conducting the proceeding and disposing
18 of the matter, including imposing nonjudicial discipline, as has a field grade
19 officer pursuant to this section. The panel shall forward its recommendation
20 for disposition and imposition of discipline, if any, to the appointing authority.
21 The appointing authority shall approve the recommended discipline or any part

1 or amount as the appointing authority sees fit and may suspend, mitigate, or
2 remit as he or she deems appropriate. The appointing authority may not
3 approve any discipline in excess of that approved by the panel.

4 (5) The procedural requirements for a nonjudicial hearing and its
5 disposition by the panel shall be the same as would otherwise be applicable for
6 disposition by the commanding officer, including the individual's right to
7 counsel; to submit matters in extenuation, mitigation, or defense; and to call
8 and examine witnesses, to the extent witnesses are reasonably available.

9 (6) Appeals from the decision of the appointing authority may be taken
10 directly to the next higher authority to act upon appeal as set forth in this
11 section with respect to nonjudicial discipline appeals generally, unless the
12 action is initiated by a general officer, in which case the Adjutant and Inspector
13 General shall have the final decision.

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2014.