

S.177

Introduced by Senators Sears and White

Referred to Committee on Government Operations

Date: January 7, 2014

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

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

An act relating to nonjudicial discipline

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

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

§ 946. COMMANDING OFFICER NONJUDICIAL DISCIPLINE

(a) A commanding officer may impose discipline for minor military  
offenses without the intervention of a court-martial in accordance with any  
regulations issued under this chapter. A member subject to discipline shall not  
be entitled to a court-martial for a minor military offense that will not involve a  
restraint on liberty as a punishment. A member subject to discipline shall have  
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.~~

*Sec. 1. 20 V.S.A. chapter 39 (courts-martial) §§ 941–945 are designated as subchapter 1, which is added to read:*

*Subchapter 1. General Provisions*

*Sec. 2. 20 V.S.A. chapter 39 (courts-martial), subchapter 2 is added to read:*

*Subchapter 2. Nonjudicial Discipline*

*§ 961. COMMANDING OFFICER NONJUDICIAL DISCIPLINE*

*(a)(1) A commanding officer may impose nonjudicial discipline upon a service member for minor military offenses without the intervention of a court-martial in accordance with the provisions of this subchapter.*

(2) The commanding officer who intends to impose nonjudicial discipline upon a service member shall notify him or her of the following:

(A) the nature of the alleged offense;

(B) the commanding officer's intent to dispose of the matter by nonjudicial discipline; and

(C) any other nonjudicial discipline procedural rights established by regulation.

(3) As used in this section, "commanding officer" shall include an officer-in-charge.

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

(1) an admonition;

(2) a reprimand;

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

(4) a fine of not more than seven days' pay;

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

(6) extra duties for not more than 14 days, which need not be consecutive; and

(7) restriction to certain specified limits, with or without suspension from duty, for not more than 14 days, which need not be consecutive.

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

(1) any discipline authorized in subdivisions (b)(1), (2), and (3) of this section;

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

(3) a fine of not more than one month's pay;

(4) a reduction to the lowest or any intermediate pay grade, if the grade from which the member is demoted is within the promotion authority of the



officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

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

(6) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, which need not be consecutive.

(d)(1) The Adjutant and Inspector General or an officer of a general or flag rank in command may impose:

(A) upon an officer or warrant officer of the officer's command, any discipline authorized in subdivisions (c)(1), (2), (3), and (6) of this section;

(B) upon an enlisted member of the officer's command, any discipline authorized in subsection (c) of this section.

(2) The Adjutant and Inspector General or an officer of a general or flag rank in command may delegate his or her powers under this subsection to a principle assistant who is a member of the Vermont National Guard.

(e) Whenever any disciplines imposed under this section are to be served consecutively, the total length of the combined discipline shall not exceed the authorized duration of the longest discipline in the combination, and there shall be an apportionment of disciplines so that no single discipline in the combination exceeds its authorized length.

(f)(1) The officer who imposes the discipline or his or her successor in command may at any time suspend, set aside, mitigate, or remit any part or amount of the discipline and restore all rights, privileges, and property affected. The officer also may mitigate a reduction in grade to a forfeiture of pay or mitigate extra duties to a restriction to certain specified limits.

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

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

§ 962. SERVICE MEMBERS SUBJECT TO NONJUDICIAL DISCIPLINE

(a) A service member subject to nonjudicial discipline under this subchapter shall, during the course of his or her disciplinary proceedings, have the right to:

(1) consult with a judge advocate or with private counsel at the service member's own expense;

(2) submit matters in extenuation, mitigation, or defense; and

(3) call and examine witnesses, to the extent witness are reasonably available.

(b)(1) Except as provided in subdivision (2) of this subsection, a service member subject to nonjudicial discipline shall have the right to demand a court-martial in lieu of nonjudicial discipline.

~~(2) A service member subject to nonjudicial discipline shall not have the right to demand a court-martial in lieu of nonjudicial discipline if the service member is notified by the commanding officer that the commanding officer does not intend to impose a restriction to certain specified limits, a fine, or extra duties if, after a hearing, the service member is found guilty of any offense with which he or she is charged.~~

(2) A service member subject to nonjudicial discipline shall not have the right to demand a court-martial in lieu of nonjudicial discipline if the commanding officer will not impose a restriction to certain specified limits, a fine, or extra duties if, after a hearing, the service member is found guilty of any offense with which he or she is charged and the commanding officer advises the service member of that fact when the commanding officer notifies the service member of his or her intent to impose nonjudicial discipline.

(c)(1) A service member subject to nonjudicial discipline under this subchapter may elect to have his or her case heard before a nonjudicial discipline panel, described in section 963 of this subchapter.

(2) The service member shall have 24 hours from the commanding officer's notice of his or her intent to dispose of the matter by nonjudicial discipline to make an election for disposition by a nonjudicial panel, and shall have the right to consult with a judge advocate or with private counsel at the service member's own expense prior to making such a decision.

#### § 963. NONJUDICIAL DISCIPLINE PANELS

(a) When a service member elects to have his or her case heard before a nonjudicial discipline panel as provided in section 962 of this subchapter, the panel shall be formed as follows:

(1) The panel shall consist of three members, appointed by the next higher authority of the commanding officer who seeks to impose the nonjudicial discipline.

(2) The members of the panel shall be officers who are senior to the service member requesting the panel. If it is an enlisted service member requesting the panel, there shall be at least one enlisted service member on the panel, but that enlisted service member must be senior to the enlisted service member requesting the panel.

(3) The senior member of the panel shall be the chair. The most junior member shall be the recorder and shall record summaries of the proceedings.

(4) If the nonjudicial discipline is being offered by a general officer, the panel shall consist of three members appointed by the Adjutant and Inspector General with the most senior member being the chair and the most junior member being the recorder, who shall record the summaries of the proceedings.

(b) The panel decision shall be by majority vote. The panel shall have the same authority and responsibility in conducting the proceeding and disposing of the matter, including imposing nonjudicial discipline, as has a commanding officer of the grade of major or above pursuant to this subchapter.

(c)(1) The panel shall forward its recommendation for disposition and imposition of discipline, if any, to the authority who appointed the panel under subsection (a) of this section.

(2)(A) The appointing authority may approve the recommended discipline or any part or amount as the appointing authority sees fit and may suspend, mitigate, or remit the recommended discipline as he or she deems appropriate.

(B) The appointing authority shall not approve any discipline in excess of that recommended by the panel.

#### § 964. APPEALS FROM NONJUDICIAL DISCIPLINE DECISIONS

(a)(1) A service member disciplined under this subchapter who considers the discipline unjust or disproportionate to the offense may appeal to the next superior authority within 15 days after the discipline is either announced or notice of the discipline is sent to the accused, as the commander under section 961 or the appointing authority under section 963 of this subchapter may determine.

(2) An appeal from the decision of an appointing authority under section 963 of this subchapter shall be taken directly to the next higher authority.

unless the action is initiated by a general officer, in which case the Adjutant and Inspector General shall have the final decision.

(b) The appeal shall be promptly forwarded and decided, but the service member disciplined may, in the meantime, be required to undergo the discipline adjudged.

(c)(1) The superior authority may exercise the same powers with respect to the discipline imposed as may be exercised under section 961 or 963 of this subchapter by the officer who imposed the discipline, except that the superior authority shall not impose any discipline in excess of what was originally imposed.

(2) Before acting on an appeal, the authority may refer the case to a judge advocate for consideration and advice.

#### § 965. EFFECT OF NONJUDICIAL DISCIPLINE

(a) The imposition and enforcement of nonjudicial discipline under this subchapter for any act or omission shall not be a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this subchapter.

(b) The fact that nonjudicial discipline has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of discipline to be adjudged in the event of a finding of guilty.

#### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.