MISSISSIPPI LEGISLATURE REGULAR SESSION 2017

By: Representative Rogers (61st)

To: Military Affairs; Judiciary A

HOUSE BILL NO. 1221

AN ACT TO AMEND SECTION 33-13-151, MISSISSIPPI CODE OF 1972, TO REVISE THE COMPOSITION OF SUMMARY COURTS-MARTIAL; TO AMEND SECTION 33-13-159, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DECISION TO GRANT A REQUEST FOR TRIAL BEFORE A SPECIAL OR GENERAL COURTS-MARTIAL IS RESERVED TO THE GENERAL COURT-MARTIAL CONVENING AUTHORITY, AND TO REVISE THE MAXIMUM SENTENCE WHICH MAY BE IMPOSED BY A SUMMARY COURTS-MARTIAL FOR A SINGLE OFFENSE; TO AMEND SECTION 33-13-179, MISSISSIPPI CODE OF 1972, TO REVISE WHO MAY CONVENE A SUMMARY COURTS-MARTIAL; TO AMEND SECTION 33-13-183, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A MILITARY JUDGE OR A SUMMARY COURT OFFICER SHALL PRESIDE OVER SESSIONS OF THE COURT-MARTIAL TO WHICH HE OR SHE HAS BEEN DETAILED; TO AMEND SECTION 33-13-325, MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT OF FINE WHICH MAY BE IMPOSED BY A MILITARY COURT FOR CONTEMPT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 33-13-151, Mississippi Code of 1972, is amended as follows:

33-13-151. The three (3) kinds of courts-martial in each of the state military forces are:

(a) General court-martial consisting of:

(i) A military judge and not less than six (6) members; or

(ii) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed of a military judge and the military judge approves;

(b) Special court-martial, consisting of:

(i) Not less than three (3) members; or

(ii) A military judge and not less than three (3) members; or

(iii) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in paragraph (a)(ii) so requests; and

(c) Summary court-martial, consisting of one (1) commissioned officer in the grade of major or above, who shall be a military judge licensed to practice law in this state, or * * * a judge advocate licensed to practice law in this state.

SECTION 2. Section 33-13-159, Mississippi Code of 1972, is amended as follows:

33-13-159. (1) Subject to Section 33-13-153 of this code, summary courts-martial have jurisdiction to try persons subject to this code, except officers, for any offense made punishable by this code.

(2) * * * Any person given notice of trial by a summary courts-martial may request trial before a special or general

courts-martial. The decision to grant this request is reserved to the general court-martial convening authority.

(3) *** * *** The maximum sentence a summary courts-martial may impose for a single offense is:

(a) A fine of not more than Two Hundred Fifty Dollars ($250.00);

(b) Reduction to the lowest or any intermediate pay grade, but an enlisted member in a pay grade above E-4 may not be reduced more than four (4) pay grades;

(c) Confinement for not more than thirty (30) days;

(d) Forfeiture of all pay and allowances for any period of confinement;

(e) If found to have willfully or maliciously caused any injury to any person or property, restitution in an amount of Three Thousand Five Hundred Dollars ($3,500.00) or less; and

(f) Any punishment authorized in Section 33-13-31.

(4) Any person given notice of a trial by a summary courts-martial who fails to appear at trial may be tried, convicted and sentenced in absentia.

SECTION 3. Section 33-13-179, Mississippi Code of 1972, is amended as follows:

33-13-179. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or of a regiment, wing, group,

battalion, detached squadron, *** * *** detached company or higher command, may convene a summary court-martial.

SECTION 4. Section 33-13-183, Mississippi Code of 1972, is amended as follows:

33-13-183. (1) The authority convening a general or special court-martial shall, and subject to regulations issued by the Governor, the authority convening a summary court-martial may, detail a military judge. A military judge or a summary court officer shall preside over open sessions of the court-martial to which he has been detailed and shall be the approving authority over all pleas.

(2) A military judge shall be a commissioned officer of the state military forces who is a member of the Judge Advocate General Corps, a member of the bar of a federal court and a member of the bar of the Supreme Court of the State of Mississippi and who is certified to be qualified for duty as a military judge by the State Judge Advocate of the state military forces. Any military judge qualified pursuant to 18 USCS 826 may be considered a military judge herein upon determination of need by the Adjutant General of the State of Mississippi.

(3) The military judge of a general court-martial shall be designated by the State Judge Advocate, or his designee, for detail by the convening authority and, unless the court-martial was convened by the Governor or the Adjutant General, neither the convening authority nor any member of his staff shall prepare or

review any report concerning the effectiveness, fitness or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(4) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court except in the presence of the * * * trial counsel and defense counsel, nor may he vote with the members of the court in a panel case.

(6) A military judge detailed to preside over a court-martial hereunder shall not be subject to any report by the convening authority or any member of his staff concerning the effectiveness, fitness or efficiency of that military judge so detailed, which relates to his performance of duty as a military judge.

(7) All trial counsel, defense counsel, military judges, legal officers, summary court officers and any other person certified by the State Judge Advocate to perform legal functions under this code, shall be used interchangeably, as needed, among all of the state military forces.

SECTION 5. Section 33-13-325, Mississippi Code of 1972, is amended as follows:

33-13-325. A military court may punish for contempt any person who uses any menacing words, sign or gesture in its

presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for thirty (30) days or a fine of *** * *** Eight Hundred Dollars ($800.00), or both, provided that punishment of civilians by civilian courts for such contempt shall not be prohibited hereby.

SECTION 6. This act shall take effect and be in force from and after July 1, 2017.