

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 1422

Introduced by Senator Padilla

February 21, 2014

An act to add ~~Section 470.1~~ *Sections 58 and 470.5* to the Military and Veterans Code, relating to military courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1422, as amended, Padilla. Military courts: sexual assault: ~~reporting.~~ *courts-martial.*

Existing law provides that the military courts of this state are general courts-martial, special courts-martial, summary courts-martial, and courts of inquiry. Existing law provides that general, special, and summary courts-martial have the power to try and adjudge specified members of the active militia. Existing law establishes various sexual assault offenses, including the offenses of rape, unlawful sexual intercourse, and abduction.

~~This bill would authorize a person subject to the jurisdiction of a military court of the state to report a sexual assault offense, as provided.~~

Existing law establishes the Military Department, which includes the office of the Adjutant General, the California National Guard, the State Military Reserve, the California Cadet Corps, and the Naval Militia. Federal laws and regulations governing the United States Army, Navy, Air Force, and National Guard and not in conflict with state law are adopted with respect to the state military forces.

This bill would require the department, on or before March 1 of each year, to report to the Governor, the Legislature, the Senate Committee on Veterans Affairs, and the Assembly Committee on Veterans Affairs

certain information regarding the federal government’s sexual assault prevention and response activities for the previous federal fiscal year, as well as any plans for the prevention of and response to sexual assault in the current federal fiscal year.

This bill would prescribe procedures under which the department or the California National Guard may assert jurisdiction over cases of rape, sexual assault, forcible sodomy, or an attempt of those offenses, by a member of the California National Guard when a district attorney or other equivalent civilian prosecutorial authority refuses to prosecute on behalf of the state. The bill would require a member of the California National Guard recommended for court-martial pursuant to a specified hearing for any of the previously described offenses to be tried by general court-martial.

This bill would prohibit a convening authority from overturning a conviction of rape or sexual assault handed down by a general court-martial. A statute of limitations would not apply to cases subject to the jurisdiction of the military court, and the bill also would require the punishment for a conviction of any of the specified offenses to be issued as directed by the general court-martial, and to include, at a minimum, dismissal or dishonorable discharge.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 58 is added to the Military and Veterans
2 Code, to read:
3 58. Notwithstanding Sections 9795 and 10231.5 of the
4 Government Code, on or before March 1 of each year, the
5 department shall report the following information to the Governor,
6 the Legislature, the Senate Committee on Veterans Affairs, and
7 the Assembly Committee on Veterans Affairs:
8 (a) For the previous federal fiscal year:
9 (1) The policies, procedures, and processes in place or
10 implemented by the Sexual Assault Prevention and Response
11 (SAPR) Program during that federal fiscal year in response to
12 incidents of sexual assault.
13 (2) An assessment of the implementation of the policies and
14 procedures on the prevention, response, and oversight of sexual
15 assaults in the military to determine the effectiveness of SAPR

1 *policies and programs, including an assessment of how service*
2 *efforts executed federal Department of Defense SAPR priorities.*

3 *(3) Matrices for restricted and unrestricted reports of the*
4 *number of sexual assaults involving service members, that includes*
5 *case synopses, and disciplinary actions taken in substantiated*
6 *cases and relevant information.*

7 *(4) Analyses of the matrices of the number of sexual assaults*
8 *involving service members.*

9 *(b) For the current federal fiscal year, any plans for the*
10 *prevention of and response to sexual assault, specifically in the*
11 *areas of advocacy, healthcare provider and medical response,*
12 *mental health, counseling, investigative services, legal services,*
13 *and chaplain response.*

14 *SEC. 2. Section 470.5 is added to the Military and Veterans*
15 *Code, to read:*

16 *470.5. (a) A member of the California National Guard who,*
17 *while on state or federal orders, violates a provision of the Penal*
18 *Code for rape, sexual assault, forcible sodomy, or an attempt of*
19 *any of these offenses, shall be prosecuted by the office of the district*
20 *attorney or other equivalent civilian prosecutorial authority with*
21 *appropriate jurisdiction. The Military Department or California*
22 *National Guard may only claim jurisdiction under the Uniformed*
23 *Code of Military Justice, as incorporated by this code, if the district*
24 *attorney, or other equivalent civilian prosecutorial authority,*
25 *refuses to pursue a criminal prosecution of a member of the*
26 *California National Guard.*

27 *(b) (1) Subject to subdivision (b), a member of the California*
28 *National Guard recommended for court-martial pursuant to an*
29 *Article 32 (10 U.S.C. Sec. 832) hearing for rape, sexual assault,*
30 *forcible sodomy, or an attempt of any of these offenses shall be*
31 *tried by general court-martial.*

32 *(2) Notwithstanding any other provision of the Uniform Code*
33 *of Military Justice (UCMJ), a convening authority in the California*
34 *National Guard, as authorized by the UCMJ as incorporated by*
35 *this code, shall not overturn a sexual assault or rape conviction*
36 *issued by a general court-martial.*

37 *(3) A member of the California National Guard who is found*
38 *guilty of rape, sexual assault, forcible sodomy, or an attempt of*
39 *any of these offenses, shall be punished as the general*

1 *court-martial may direct, subject to Section 456, and shall include,*
2 *at a minimum, dismissal or dishonorable discharge.*
3 *(4) There is no statute of limitations for a member of the*
4 *California National Guard to be charged with rape or sexual*
5 *assault when tried and punished by a general court-martial as*
6 *provided in this section.*

7 ~~SECTION 1. Section 470.1 is added to the Military and~~
8 ~~Veterans Code, to read:~~

9 ~~470.1. Notwithstanding any other law, a person subject to the~~
10 ~~jurisdiction of a military court of the state may report a crime~~
11 ~~described in Chapter 1 (commencing with Section 261) of Title 9~~
12 ~~of Part 1 of the Penal Code to the civil authorities.~~