

Senate Study Bill 1077 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC DEFENSE BILL)

A BILL FOR

1 An Act relating to service in the national guard and reserve
2 components of the armed forces, including applicability of
3 reemployment protections, and military justice jurisdiction
4 and statutes of limitation.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 29A.43, Code 2017, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 4. The protections provided for in this
4 section shall apply with equal force to members of the national
5 guard of another state, an organized reserve unit in another
6 state, or a civil air patrol unit in another state who are
7 employed in this state.

8 Sec. 2. Section 29B.1, Code 2017, is amended to read as
9 follows:

10 **29B.1 Persons subject to code.**

11 1. **This chapter** applies to all members of the state military
12 forces performing national guard duty or state active duty,
13 while not on federal active duty. In addition, this chapter
14 applies to all members of the state military forces who commit
15 an offense during travel to or from the member's duty location
16 or during intervals between consecutive periods of duty on the
17 same day or on consecutive days in which the victim of the
18 offense is another member of the state military forces.

19 2. As used in **this chapter**, unless the context otherwise
20 requires, "*state military forces*" has the same meaning as in
21 section 29A.6, and "*code*" means **this chapter**, which may be cited
22 as the "*Iowa Code of Military Justice*".

23 Sec. 3. Section 29B.2, Code 2017, is amended to read as
24 follows:

25 **29B.2 Jurisdiction to try personnel.**

26 1. Each person discharged from the state military forces
27 who is later charged with having fraudulently obtained a
28 discharge is, subject to **section 29B.44**, subject to trial by
29 court-martial on that charge and is after apprehension subject
30 to this code while in the custody of the military for that
31 trial. Upon conviction of that charge the person is subject
32 to trial by court-martial for all offenses under this code
33 committed before the fraudulent discharge.

34 2. No person who has deserted from the state military
35 forces may be relieved from amenability to the jurisdiction of

1 this code by virtue of a separation from any later period of
2 service.

3 3. ~~A member of the state military forces person~~ who
4 is charged with having committed an offense against this
5 code may be called or ordered to duty for the purpose of
6 investigation under [section 29B.33](#), trial by court-martial, and
7 or nonjudicial punishment under [section 29B.14](#). ~~A member shall~~
8 ~~be called or ordered to duty within one hundred eighty days of~~
9 ~~the discovery of the charged offense, and in no event shall a~~
10 ~~member be called or ordered to duty after the expiration of~~
11 ~~three years from the termination of a period of duty.~~

12 4. A member of the state military forces who is subject
13 to this code at the time of commission of an offense made
14 punishable by this code is not relieved from amenability to
15 the jurisdiction of this code by virtue of the termination of
16 a period of duty.

17 Sec. 4. Section 29B.44, Code 2017, is amended to read as
18 follows:

19 **29B.44 Statute of limitations.**

20 1. A person charged with desertion or absence without leave
21 in time of war, or with aiding the enemy or with mutiny, may be
22 tried and punished at any time without limitation.

23 2. Except as otherwise provided in [this section](#), a person
24 charged with desertion in time of peace or with the any other
25 offense punishable under [section 29B.112](#) under this code is
26 not liable to be tried by court-martial if the offense was
27 committed more than ~~three~~ five years before the receipt of
28 sworn charges and specifications by an officer exercising
29 summary court-martial jurisdiction over the command.

30 3. Except as otherwise provided in [this section](#), a person
31 charged with any offense under this code is not liable to be
32 ~~tried by court-martial or punished under [section 29B.14](#)~~ if the
33 offense was committed more than two years before the receipt
34 ~~of sworn charges and specifications by an officer exercising~~
35 ~~summary court-martial jurisdiction over the command or before~~

1 ~~the~~ imposition of punishment under [section 29B.14](#).

2 4. Periods in which the accused was absent from territory
3 in which the state has the authority to apprehend the accused,
4 or in the custody of civil authorities, or in the hands of the
5 enemy, shall be excluded in computing the period of limitation
6 prescribed in [this section](#).

7 5. If charges or specifications are dismissed as defective
8 or insufficient for any cause and the period prescribed by the
9 applicable statute of limitations has expired or will expire
10 within one hundred eighty days after the date the charges
11 or specifications are dismissed, trial by court-martial or
12 punishment under section 29B.14 is not barred by the statute of
13 limitations if the following conditions are met:

14 a. The charges and specifications are received by an officer
15 exercising summary court-martial jurisdiction or having the
16 authority to conduct punishment under section 29B.14 within one
17 hundred eighty days after the charges or specifications are
18 dismissed.

19 b. The charges and specifications allege some or all of
20 the same acts or omissions that were alleged in the dismissed
21 charges or specifications.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill concerns the department of public defense relating
26 to provisions under Code chapter 29A, the military code, and
27 Code chapter 29B, the Iowa code of military justice.

28 Code section 29A.43 is amended to provide that members
29 of the national guard of another state or a military reserve
30 unit in another state who are employed in this state have the
31 same protections regarding nondiscrimination and reemployment
32 rights, including continuation of health coverage, as members
33 of the Iowa national guard.

34 Code section 29B.1, concerning persons subject to the Iowa
35 code of military justice, is amended to specifically provide

1 that the code applies to members of the state military forces
2 when they are performing national guard duty or state active
3 duty. In addition, Code section 29B.1 is amended to provide
4 that a military offense committed by one member of the state
5 military forces during travel to or from the member's duty
6 location or during intervals between consecutive periods of
7 duty on the same day or on consecutive days against another
8 member of the state military forces, and there is a direct
9 relationship between the offense and the military membership,
10 is also subject to state military criminal jurisdiction.

11 Code section 29B.2, concerning jurisdiction to try
12 personnel, is amended by striking a provision prohibiting
13 a member of the state military forces from being called or
14 ordered to duty after the expiration of three years from the
15 termination of a period of duty relating to a member who is
16 charged with having committed an offense against the Iowa code
17 of military justice.

18 Code section 29B.44, concerning the statute of limitations
19 under the Iowa code of military justice, is amended. The
20 bill provides that, unless otherwise provided by Code section
21 29B.44, the statute of limitations for charging a person with
22 desertion in time of peace or any other offense under the code
23 subject to trial by court-martial is five years. Current law
24 provides that the statute of limitations is three years for
25 charging a person with desertion in time of peace or perjury
26 and two years for charging a person for any other offense of
27 the code subject to trial by court-martial. In addition, the
28 bill provides that dismissed military criminal charges may be
29 refiled within 180 days of dismissal.