

Senate Bill No. 1422

CHAPTER 228

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

[Approved by Governor August 21, 2014. Filed with
Secretary of State August 21, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1422, Padilla. Military courts: sexual assault: 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.

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 July 1 of each year, to report prescribed information to the Governor, the Legislature, the Senate Committee on Veterans Affairs, the Assembly Committee on Veterans Affairs, the Attorney General, and the United States Attorneys in California regarding the federal government's activities relating to sexual assault prevention and response.

The bill would restrict the authority of the department or the California National Guard to assert jurisdiction over qualifying sexual assault offenses, as defined, by a member of the active militia when subject to the Uniform Code of Military Justice, to occasions when a civilian prosecutorial authority refuses to prosecute on behalf of the state. The bill would require a member of the active militia recommended for court-martial pursuant to a specified hearing for a qualifying sexual assault offense, or an attempt of that offense, to be tried by general court-martial.

The bill would prohibit a convening authority from overturning a conviction for a qualifying sexual assault offense issued by a general court-martial. The bill would require the convening authority to dispose of cases on appeal in accordance with the decision of the Courts-Martial Appellate Panel. Under the bill, no statute of limitations would apply for a member of the active militia to be charged with a qualifying sexual assault offense when subject to the jurisdiction of the military court, and the bill

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.

The bill would define the term “sexual assault crime” to include specified offenses under existing law.

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

SECTION 1. Section 58 is added to the Military and Veterans Code, to read:

58. Notwithstanding Sections 9795 and 10231.5 of the Government Code, on or before July 1 of each year, the department shall report the following information to the Governor, the Legislature, the Senate Committee on Veterans Affairs, and the Assembly Committee on Veterans Affairs, the Attorney General, and the United States Attorney for each district in California:

(a) For the previous federal fiscal year:

(1) The policies, procedures, and processes in place or implemented by the Sexual Assault Prevention and Response (SAPR) Program during that federal fiscal year in response to incidents of sexual assault.

(2) An assessment of the implementation of the policies and procedures on the prevention, response, and oversight of sexual assaults in the military to determine the effectiveness of SAPR policies and programs, including an assessment of how service efforts executed federal Department of Defense SAPR priorities.

(3) Matrices for restricted and unrestricted reports of the number of sexual assaults involving service members, that includes case synopses, and disciplinary actions taken in substantiated cases and relevant information. Reporting on restricted cases shall be limited to aggregated statistical data so that the privacy of victims is protected. Reporting on unrestricted cases shall be limited to aggregated statistical data, but shall include, at a minimum, the following subcategories:

(A) Types of crimes.

(B) Types of victims.

(C) Status of investigations.

(D) Status of prosecutions.

(E) Status of department administrative actions.

(4) Analyses of the matrices of the number of sexual assaults involving service members. The analyses shall include analysis of data and trends in comparison to state data from previous years and, to the degree possible, comparisons of state data and trends and data and trends from other branches and components of the United States Armed Forces, including both active and reserve components, including the National Guard of other states and territories.

(b) For the current federal fiscal year, any plans for the prevention of and response to sexual assault, specifically in the areas of advocacy,

healthcare provider and medical response, mental health, counseling, investigative services, legal services, and chaplain response.

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

470.5. (a) A member of the active militia who, when subject to the Uniform Code of Military Justice (UCMJ) as incorporated by this code, violates a provision of the Penal Code for a sexual assault crime as defined in subdivision (c), or an attempt of that offense, shall be subject to prosecution by the office of the district attorney or other equivalent civilian prosecutorial authority with appropriate jurisdiction. The Military Department or California National Guard may claim jurisdiction only under the UCMJ as incorporated by this code, if the district attorney, or other equivalent civilian prosecutorial authority, refuses to pursue a criminal prosecution of that member.

(b) (1) Subject to subdivision (a), a member of the active militia recommended for court-martial pursuant to an Article 32 hearing (10 U.S.C. Sec. 832), as authorized by the UCMJ as incorporated by this code, for a qualifying sexual assault offense, as defined in subdivision (d), shall be tried by general court-martial.

(2) Notwithstanding any other provision of the UCMJ as incorporated by this code, a convening authority in the California National Guard or in the Military Department, as authorized by the UCMJ as incorporated by this code, shall not overturn a conviction for a qualifying sexual assault offense issued by a general court-martial. On appeal, the convening authority shall dispose of the case in accordance with the decision of the Courts-Martial Appellate Panel, as authorized by this code.

(3) A member of the active militia who is found guilty of a qualifying sexual assault offense, or an attempt of that offense shall be punished as the general court-martial may direct, subject to Section 456, and that punishment shall include, at a minimum, dismissal or dishonorable discharge.

(4) There is no statute of limitations for a member of the active militia to be charged with a qualifying sexual assault offense, when tried and punished by a general court-martial as provided in this section.

(c) For purposes of this section, “sexual assault crime” means conduct constituting any of the crimes defined in the following provisions of the Penal Code:

(1) Section 243.4 of the Penal Code.

(2) Chapter 1 (commencing with Section 261) of Title 9 of Part 1 of the Penal Code.

(3) Section 286 of the Penal Code.

(4) Subdivision (a) or (b), or paragraph (1) of subdivision (c), of Section 288 of the Penal Code.

(5) Section 647.6 of the Penal Code.

(d) For purposes of this section, a “qualifying sexual assault offense” under the Uniform Code of Military Justice is one that violates any of the following provisions of that code, or an attempt thereof:

(1) Subdivision (a) or (b) of Article 120 (10 U.S.C. Sec. 920(a) and (b)).

- (2) Article 120b (10 U.S.C. Sec. 920b).
- (3) Article 125 (10 U.S.C. Sec. 925).
- (e) Sex offender registration requirements for state military convictions contained in Sections 290 to 290.024, inclusive, of the Penal Code, are applicable to persons convicted of a qualifying sexual assault offense, or of the attempt or conspiracy to commit that offense.

O