

Article 3.

National Guard.

**§ 127A-29. National Guard.**

The North Carolina National Guard class of the four classes of the organized militia as established under G.S. 127A-2 is hereby designated the "North Carolina National Guard." Those elements of the North Carolina National Guard which receive federal recognition by the United States government shall hold a dual status both as State troops and as a reserve component of the Armed Forces of the United States. In its federal status, the North Carolina National Guard shall be subject to federal laws and regulations pertaining thereto. The Adjutant General shall insure compliance with those federal laws and regulations and with all State laws and orders of the Governor not inconsistent with them. (1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-30. Organization of National Guard units.**

Except as otherwise specifically provided by the laws of the United States, the organization of the North Carolina National Guard, including the composition of all its units, shall be the same as that which is or may hereafter be prescribed for the regular United States Army or Air Force subject in time of peace to general exceptions authorized by the Secretary of Defense. (1917, c. 200, s. 7; C.S., s. 6808; 1959, c. 218, s. 4; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-31. Location of units.**

The Governor shall determine and fix the location of the units and headquarters of the North Carolina National Guard within the State; but no organization of the North Carolina National Guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of Congress approved June 3, 1916, as amended, shall be disbanded without the consent of the President, nor without that consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the President. (1917, c. 200, s. 9; C.S., s. 6809; 1921, c. 120, s. 2; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-32. Officers appointed and commissioned; oath of office.**

All officers of the North Carolina National Guard shall be appointed and commissioned by the Governor as follows, viz.:

- (1) Except as otherwise specifically provided by the laws of the United States, the qualifications for appointment as an officer in the North Carolina National Guard shall be the same as those prescribed for the regular establishment, subject to general exceptions authorized by the Secretary of Defense.
- (2) Candidates for appointment shall make written application therefor on forms prescribed by the secretary of the appropriate service, to the Adjutant General, State of North Carolina, through command channels for comment by endorsements thereon.
- (3) No person shall hereafter be appointed an officer of the North Carolina National Guard unless the person has established to the satisfaction of a board of officers that person's physical, moral, and professional qualifications to perform the duties of the grade and position for which examined, subject to general exceptions authorized by the Secretary of Defense. The board shall consist of

three or more commissioned officers of the appropriate service, appointed under regulations promulgated by the secretary of the appropriate service.

- (4) Candidates appointed as officers of the North Carolina National Guard shall take and subscribe to the following oath of office:

"I, (First Name – Middle Name – Last Name), do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey orders of the President of the United States and of the Governor of the State of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of (Grade) (Branch) in the National Guard of the State of North Carolina upon which I am about to enter, so help me God." (1917, c. 200, s. 15; C.S., s. 6811; 1921, c. 120, s. 3; 1959, c. 218, s. 5; 1973, c. 620, s. 9; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-33. Promotion of officers by seniority and in accordance with regulations.**

The promotion of all officers shall be by seniority as far as practicable and in the best interest of the service within the organization, and in accordance with regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 17; C.S., s. 6814; 1921, c. 120, s. 4; 1959, c. 218, s. 7; 1975, c. 604, s. 2; 2011-195, s. 1(a).)

**§ 127A-34. Relative rank among officers of same grade.**

Officers of the North Carolina National Guard in the same grade rank among themselves according to the date of rank established by regulations promulgated by the secretary of the appropriate service and the Adjutant General of the State of North Carolina. (1917, c. 200, s. 19; C.S., s. 6816; 1921, c. 120, s. 5; 1927, c. 227, s. 1; 1959, c. 218, s. 8; 1961, c. 192, s. 2; 1963, c. 1016, s. 2; 1975, c. 604, s. 2; 2009-281, s. 1.)

**§ 127A-35. Elimination and disposition of officers; efficiency board; transfer to inactive status.**

(a) Whenever the efficiency or general fitness, including physical fitness, of a North Carolina National Guard officer is in question, the Adjutant General, State of North Carolina, may order the officer to appear before an efficiency board to determine whether or not the appointment of the officer should be withdrawn. The efficiency board will be composed of not less than three commissioned officers, all senior in rank to the officer undergoing investigation. A member of the board serving in a legal or medical advisory capacity may be junior to any person, other than a judge advocate, law specialist, or medical officer being considered. The findings of an efficiency board are not final until reviewed and approved by the Secretary of Public Safety and the Governor of the State of North Carolina.

(b) Commissions of officers of the North Carolina National Guard may be vacated upon resignation, absence without leave for 30 days, pursuant to sentence of a court martial, or pursuant to regulations promulgated by the secretary of the appropriate service.

(c) Officers of the North Carolina National Guard may, upon their own request, be transferred to the inactive North Carolina National Guard, subject to exceptions authorized by the Adjutant General, State of North Carolina, or the Secretary of Defense. (1917, c. 200, s. 28; C.S., s.

6818; 1959, c. 218, s. 9; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 2009-281, s. 1; 2011-145, s. 19.1(g); 2011-195, s. 1(a).)

**§ 127A-36. Retirement of officers.**

Retirement of officers shall be regulated so as to conform to federal laws and regulations of the United States relating to retirement of National Guard officers. (1917, c. 200, s. 29; C.S., s. 6819; 1949, c. 1130, s. 2; 1975, c. 604, s. 2; 2009-281, s. 1.)

**§ 127A-37. Enlistments in National Guard; oath of enlistment.**

(a) Enlistments in the North Carolina National Guard shall be for the periods and subject to the qualifications as prescribed by the secretary of the appropriate service.

(b) Enlisted persons shall not be recognized as members of the North Carolina National Guard until they shall have subscribed to the following oath of enlistment:

"I do hereby acknowledge to have voluntarily enlisted this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the (Army) (Air) National Guard of the State of North Carolina and as a Reserve of the (Army) (Air Force) with membership in the (Army National Guard of the United States) (Air National Guard of the United States) for a period of (Years – Months – Days) under the conditions prescribed by law, unless sooner discharged by proper authority.

"I, (First Name – Middle Name – Last Name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of North Carolina and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice, so help me God." (1917, c. 200, s. 30; C.S., s. 6820; 1921, c. 120, s. 6; 1957, c. 136, s. 6; 1959, c. 218, s. 10; 1975, c. 604, s. 2; 1999, c. 456, s. 59; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-38. Discharge of enlisted personnel.**

(a) Enlisted personnel discharged from service in the North Carolina National Guard shall receive a discharge in writing in the form and with the classification that is or shall be prescribed under regulations promulgated by the appropriate service.

(b) Discharges may be given prior to the expiration of terms of enlistment under regulations prescribed by the Adjutant General, State of North Carolina, or pursuant to regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 32; C.S., s. 6822; 1959, c. 218, s. 12; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-39. Membership continued in the National Guard.**

When called or ordered into federal service and discharged therefrom, members shall continue their membership in the North Carolina National Guard until the expiration of their enlistment or appointment, unless sooner terminated by proper authority. (1921, c. 120, s. 8; C.S., s. 6822(a); 1959, c. 218, s. 13; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-40. Pensions for the members of the North Carolina National Guard.**

(a) Every member and former member of the North Carolina National Guard who meets the requirements of this section shall receive, commencing at age 60, a pension of one hundred five dollars (\$105.00) per month for 20 years' creditable military service with an additional ten dollars

and fifty cents (\$10.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed two hundred ten dollars (\$210.00) per month. The requirements for a pension are that each member shall:

- (1) Have served and qualified for at least 20 years' creditable military service, including National Guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.
  - (2) Have at least 15 years of the aforementioned service as a member of the North Carolina National Guard.
  - (3) Have received an honorable discharge from the North Carolina National Guard.
- (b) Payment to a retired member of the North Carolina National Guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate, except that the legal representative of a retired member who dies shall be entitled to a full check for the month in which the death occurred.
- (c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the Armed Forces of the United States will be eligible for benefits under this section.
- (d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.
- (e) Repealed by Session Laws 1989, c. 792, s. 2.3.
- (f) The Board of Trustees of the Teachers' and State Employees' Retirement System shall administer the provisions of this section. The Secretary of Public Safety shall determine the eligibility of North Carolina National Guard members for the benefits provided in this section and shall certify those eligible to the Board of Trustees. In addition, the Department of Public Safety shall, on and after July 1, 1983, provide the Board of Trustees with an annual census population, by age and the number of years of creditable service, for all former members of the North Carolina National Guard in receipt of a pension as well as for all active members of the North Carolina National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Public Safety shall also provide the Board of Trustees an annual census population of all former members of the North Carolina National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund.
- (g) The provisions of this section shall apply to any member or former member of the North Carolina National Guard who is qualified for the above retirements with eligibility commencing at age 60 or July 1, 1974, whichever is the later date.
- (h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.
- (h1) Any member or former member of the North Carolina National Guard who is qualified for benefits under this section and who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the employees' or retirees' association. The authorization shall remain in effect until revoked by the member. A plan of

deductions pursuant to this subsection shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision.

(j) Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not subject to attachment, garnishments, or judgments against the member or former member of the National Guard entitled to them, nor are any rights in the fund or the pensions or benefits assignable. Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payment to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions, or any other right accruing under this Article to the same person, the person's estate, or designated beneficiary. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3; 2002-126, s. 6.4(g); 2005-276, s. 29.27; 2006-66, s. 22.20; 2007-323, s. 28.21A; 2009-66, s. 10; 2009-281, s. 1; 2009-451, s. 26.21; 2011-145, s. 19.1(g); 2011-195, s. 1(a); 2013-287, s. 3; 2014-100, s. 35.15C; 2015-241, s. 30.24; 2017-135, s. 9(d); 2020-48, s. 1.7(a).)

#### **§ 127A-40.1. North Carolina National Guard Pension Fund.**

(a) As used in this section, the term "Board of Trustees" means the Board of Trustees of the Teachers' and State Employees' Retirement System.

(b) The North Carolina National Guard Pension Fund shall include general fund appropriations made to the Department of State Treasurer and held with the Pension Accumulation Fund of the Teachers' and State Employees' Retirement System.

(c) The Board of Trustees shall have performed an annual actuarial valuation of the Fund and shall have the financial responsibility for maintaining the Fund on a generally accepted actuarial basis.

(d) An actuarially determined employer contribution shall be calculated annually by the actuary using assumptions and a cost method approved by the Actuarial Standards Board of the American Academy of Actuaries and selected by the Board of Trustees.

(e) Notwithstanding Chapter 150B of the General Statutes, the Board of Trustees may adopt a contribution policy that would recommend a contribution not less than the actuarially determined employer contribution.

(f) The recommended employer contribution rate by the Board of Trustees each year shall not be less than the actuarially determined employer contribution.

(g) The Department of Public Safety shall provide the Department of State Treasurer with any assistance required by the State Treasurer in carrying out the financial responsibilities of the State Treasurer or the Board of Trustees. (2020-48, s. 1.7(b).)

#### **§ 127A-41. Uniforms, arms and equipment.**

The North Carolina National Guard shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms and equipment as is or shall be provided for the

appropriate regular service. (1917, c. 200, s. 37; C.S., s. 6824; 1959, c. 218, s. 15; 1975, c. 604, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-41.1.** Recodified as G.S. 127B-31 by Session Laws 2019-161, s. 1(b), effective October 1, 2019. (1997-153, s. 5; 2011-195, s. 1(a).)

**§ 127A-41.2. Operation of post exchanges.**

(a) The North Carolina National Guard is authorized to operate post exchanges.

(b) The North Carolina National Guard is authorized to enter into agreements with the Army & Air Force Exchange Service to operate post exchanges. (2007-60, s. 2; 2009-281, s. 1.)

**§ 127A-42. Distinguished Service Medal by Governor of North Carolina.**

There is hereby created the North Carolina Distinguished Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor. Upon the recommendation of the Secretary of Public Safety and a board consisting of the Adjutant General and all other general officers and officers assigned to authorized general-officer-grade vacancies of the North Carolina National Guard, the Governor is authorized to present the medal to any member or former member of the Armed Forces of the United States discharged under honorable conditions, who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina National Guard. The Governor, on the Governor's own authority, may award the medal to the Secretary of Public Safety, the Adjutant General, or any other active or inactive general officer or flag officer of the Armed Forces of the United States who has distinguished himself or herself by especially meritorious conduct in the performance of his or her duties. (1955, c. 255, s. 2; 1963, c. 1016, s. 2; 1973, c. 1124; 1975, c. 604, s. 2; 1977, c. 230, s. 1; 2009-281, s. 1; 2011-145, s. 19.1(g); 2011-195, s. 1(a).)

**§ 127A-43. North Carolina National Guard Meritorious Service Medal.**

There is hereby created the North Carolina National Guard Meritorious Service Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or the Governor's designee. The Governor or the Governor's designee is authorized to award this medal upon the recommendation of the Secretary of Public Safety in consultation with the Adjutant General and a board of officers appointed by the Adjutant General. Any member or former member of the Armed Forces of the United States discharged under honorable conditions, who has distinguished himself or herself by heroism, meritorious achievement, or meritorious service to the North Carolina National Guard, is eligible for this award. The Governor, on the Governor's own authority, may award the medal to the Secretary of Public Safety, the Adjutant General or any other active or inactive general officer or flag officer of the Armed Forces of the United States who has distinguished himself or herself by heroism, meritorious achievement, or meritorious service to the North Carolina National Guard. The required heroism, achievement, or service, while of a lesser degree than that required for awarding of the North Carolina Distinguished Service Medal, must nevertheless be accomplished with distinction. (1973, c. 966, s. 1; 1975, c. 604, s. 2; 1977, c. 230, s. 2; 2009-281, s. 1; 2011-145, s. 19.1(g); 2011-195, s. 1(a).)

**§ 127A-44. North Carolina National Guard Commendation Medal.**

There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or the Governor's designee. The Adjutant General of North Carolina or the Adjutant General's designee, who shall not be below the rank of colonel (O-6), may award this medal. Any member or former member of the Armed Forces of the United States discharged under honorable conditions, who distinguishes himself or herself by example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award. (1975, c. 604, s. 2; 1977, c. 230, s. 3; 1991, c. 367, s. 2; 2011-195, s. 1(a).)

**§ 127A-44.1. North Carolina National Guard Achievement Medal.**

There is hereby created the North Carolina National Guard Achievement Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or the Governor's designee. The Adjutant General of North Carolina or the Adjutant General's designee, who shall not be below the rank of lieutenant colonel (O-5), may award this medal. Any member or former member of the Armed Forces of the United States discharged under honorable conditions, who distinguishes himself or herself by example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award. (1991, c. 367, s. 3; 2011-195, s. 1(a).)

**§ 127A-45. North Carolina National Guard State Active Duty Award.**

There is hereby created the North Carolina National Guard State Active Duty Award which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or the Governor's designee. The Adjutant General of North Carolina may present this ribbon to members of the North Carolina National Guard who, by order of the Governor, satisfactorily serve a tour of State active duty. To be worthy of this award, the nature of the tour of State active duty must have been a distinct and notable service to the State or to a community, as determined by the Adjutant General of North Carolina. On or after July 1, 1991, this award may also be presented to active guard personnel and reserve personnel who satisfactorily participate in tours of State active duty. (1973, c. 966, s. 2; 1975, c. 604, s. 2; 1991, c. 367, s. 1; 2011-195, s. 1(a).)

**§ 127A-45.1. North Carolina National Guard Governor's Unit Citation.**

There is hereby created the North Carolina National Guard Governor's Unit Citation which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or the Governor's designee. The Governor or the Governor's designee is authorized to present the unit citation, upon recommendation of the Adjutant General, subject to the approval of the Secretary, to any unit of North Carolina National Guard distinguishing itself by extraordinary heroism or meritorious service while in a State active duty status. The unit must display such gallantry, determination, and esprit de corps in accomplishing its mission under conditions which set it apart and above other units. (1977, c. 229, s. 1; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-45.2. North Carolina National Guard Meritorious Unit Citation.**

There is hereby created the North Carolina National Guard Meritorious Unit Citation which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or the Governor's designee. The Adjutant General is authorized to present this citation to

any unit of the North Carolina National Guard distinguishing itself through heroism or meritorious service to the State of North Carolina. The required heroism or meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Governor's Unit Citation, must nevertheless have been accomplished with distinction. (1977, c. 229, s. 2; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-45.2A. North Carolina National Guard Outstanding Unit Award.**

There is hereby created the North Carolina National Guard Outstanding Unit Award which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or the Governor's designee. The Adjutant General may present this citation to any unit of the North Carolina National Guard distinguishing itself through meritorious achievement or service to the State of North Carolina. The required meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Meritorious Unit Citation, must nevertheless have been accomplished with distinction. (1991, c. 367, s. 4; 2011-195, s. 1(a).)

**§ 127A-45.3. North Carolina National Guard Distinguished Civilian Service Medal.**

There is hereby created the North Carolina National Guard Distinguished Civilian Service Medal which shall be of appropriate design, rosette or other device to be worn in lieu thereof, and citation certificate, of a design approved by the Governor or the Governor's designee. The Governor or the Governor's designee is authorized to award this medal upon the recommendation of the Adjutant General of North Carolina and a board of officers and noncommissioned officers appointed by the Adjutant General, to United States citizens and governmental officials at the policy development level who render distinguished service to the North Carolina National Guard. (1977, c. 796; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-45.4. North Carolina National Guard Outstanding Civilian Service Medal.**

There is hereby created the North Carolina National Guard Outstanding Civilian Service Medal which shall be of appropriate design, rosette or other device to be worn in lieu thereof, and citation certificate, of a design approved by the Governor or the Governor's designee. The Adjutant General of North Carolina is authorized to award this medal upon the recommendation of a board of officers and noncommissioned officers, appointed by the Adjutant General, to United States citizens and governmental officials who render outstanding service to the North Carolina National Guard. (1977, c. 796; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-45.5. North Carolina National Guard Meritorious Civilian Service Award.**

There is hereby created the North Carolina National Guard Meritorious Civilian Service Award which shall consist of a certificate of a design approved by the Governor or the Governor's designee. The Adjutant General of North Carolina or the Adjutant General's designee, who shall not be below the grade of general officer, is authorized to confer this award. This award may be granted to individuals, organizations, corporations, associations and other groups, making a substantial contribution to the North Carolina National Guard. (1977, c. 796; 2009-281, s. 1; 2011-195, s. 1(a).)

**§ 127A-45.5A. Other awards.**

The Adjutant General may, from time to time, create other awards and medals to recognize meritorious service or outstanding achievement. The creation of the awards and medals shall be



approved by the Governor. The Governor or the Governor's designee shall approve the design of the awards and medals. (1991, c. 367, s. 5; 2011-195, s. 1(a).)

**§ 127A-46. Authority to wear medals, ribbons and other awards.**

The Adjutant General may prescribe those medals, ribbons and other awards and decorations that may be worn by members of the militia, not inconsistent with regulations of the respective Armed Forces of the United States. (1939, c. 344; 1959, c. 218, s. 16; 1967, c. 563, s. 4; 1975, c. 604, s. 2; 2011-195, s. 1(a).)

**§ 127A-47. Courts-martial for National Guard.**

(a) Courts-martial for military personnel of the North Carolina National Guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers as similar courts provided for by the Uniform Code of Military Justice and Manual for Courts-Martial, United States. The proceedings of courts-martial of the North Carolina National Guard shall follow the forms and modes of procedure prescribed for such similar courts.

(b) Notwithstanding any other provision of law, no provision in the Uniform Code of Military Justice and Manual for Courts-Martial, United States, concerning the special trial counsel shall apply to courts-martial convened under this Article, nor shall any such provision be construed as imposing additional or alternative procedural requirements upon the Governor of North Carolina or the North Carolina National Guard as to any "covered offense" under 10 U.S.C. § 801. (1917, c. 200, s. 55; C.S., s. 6825; 1963, c. 1018, s. 1; 1975, c. 604, s. 2; 2009-281, s. 1; 2010-193, s. 1; 2011-195, s. 1(a); 2023-86, s. 6(a).)

**§ 127A-48. General courts-martial.**

General courts-martial for military personnel of the North Carolina National Guard not in the service of the United States may be convened by orders of the Governor of the State or of the Adjutant General, and these courts shall have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the Armed Forces of the United States at the time of the offense, except that (i) no court shall have the authority to impose confinement as part of the sentence unless the court consisted of a military judge and not less than five members, except that a defendant who requests a military judge alone may be sentenced to confinement, and (ii) no court shall have the authority to impose confinement in excess of one year and one day as part of a sentence. (1917, c. 200, s. 56; C.S., s. 6826; 1957, c. 136, s. 7; 1963, c. 1018, s. 2; 1975, c. 604, s. 2; 2009-281, s. 1; 2010-193, s. 2; 2011-195, s. 1(a).)

**§ 127A-49. Special courts-martial; appointments, power and authority.**

In the North Carolina National Guard, not in the service of the United States, special courts-martial may be appointed by any of the following:

- (1) The commander of a brigade, regiment, comparable or higher command of the North Carolina Army National Guard, provided that the commander is a general officer.

- (2) The commander of a wing, group, separate squadron, comparable or higher command of the North Carolina Air National Guard, provided that the commander is a general officer.
- (3) The commander or officer in charge of any North Carolina National Guard command when empowered by the Governor or the Adjutant General of North Carolina, provided that the commander or officer is a general officer.

Except as to commissioned officers, special courts-martial shall have the power and authority to try any person subject to military law for any crimes or offenses within the jurisdiction of a general military court. Special courts-martial shall have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the Armed Forces of the United States at the time of the offense, except that (i) no court shall have the authority to impose confinement as part of the sentence unless the court consisted of a military judge and not less than three members except that a defendant who requests a military judge alone may be sentenced to confinement, and (ii) no court shall have the authority to impose confinement in excess of six months as part of a sentence. (1917, c. 200, s. 57; C.S., s. 6827; 1957, c. 136, s. 8; 1963, c. 1018, s. 3; 1973, c. 1123; 1975, c. 604, s. 2; 2009-281, s. 1; 2010-193, s. 3; 2011-195, s. 1(a).)

#### **§ 127A-50. Summary courts-martial.**

In the North Carolina National Guard, not in the service of the United States, summary courts-martial may be appointed by any of the following:

- (1) Any person who may convene a general or special court-martial.
- (2) The commander of a battalion, comparable or higher command of the North Carolina Army National Guard, provided that the commander is an officer of the grade of major or above.
- (3) The commander of a detached squadron, comparable or higher command of the North Carolina Air National Guard, provided that the commander is an officer of the grade of major or above.

The court shall consist of one officer who shall have the power to administer oaths and try enlisted personnel of each respective command for breaches of discipline and violations of laws governing those organizations. These courts shall also have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the Armed Forces of the United States at the time of the offense, except that no court shall have the authority to impose confinement as part of a sentence. There shall be no right to demand trial by court-martial. (1917, c. 200, s. 58; C.S., s. 6828; 1957, c. 136, s. 9; 1963, c. 1018, s. 4; 1975, c. 604, s. 2; 1983, c. 315, s. 1; 2009-281, s. 1; 2010-193, s. 4; 2011-195, s. 1(a).)

#### **§ 127A-50.1. Military judges.**

The Adjutant General shall appoint military judges to preside over courts-martial of the North Carolina National Guard not in federal service. Minimum requirements for appointment as a military judge are:

- (1) Certification as a military judge by the Judge Advocate General of the United States Army, Air Force, Navy, Marines, or Coast Guard.
- (2) Designation as a judge advocate by the Judge Advocate General of the United States Army, Navy, Air Force, Marines, or Coast Guard.

- (3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of the Armed Forces of the United States. (1987, c. 649, s. 1; 2010-193, s. 5; 2011-195, s. 1(a).)

**§ 127A-51. Nonjudicial punishment.**

Any commander of the North Carolina National Guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be currently in use by the Armed Forces of the United States except that there shall be no right to demand trial by court-martial. (1957, c. 136, s. 10; 1975, c. 604, s. 2; 1983, c. 315, s. 2; c. 316, s. 1; 2009-281, s. 1; 2010-193, s. 6; 2011-195, s. 1(a).)

**§ 127A-52. Jurisdiction of courts-martial.**

The jurisdiction of courts-martial of the North Carolina National Guard, not in the service of the United States, shall be as prescribed by the Manual for Courts-Martial, United States, as shall be currently in use by the Armed Forces of the United States. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from service without the State in like manner and to the same extent as while serving within the State. (1957, c. 136, s. 10; 1975, c. 604, s. 2; 1983, c. 316, s. 2; 2009-281, s. 1; 2010-193, s. 7; 2011-195, s. 1(a).)

**§ 127A-53. Manual for Courts-Martial.**

Trials and proceedings by all courts and boards shall be in accordance with the Manual for Courts-Martial, United States, as shall be currently in use by the Armed Forces of the United States, except as modified by this Chapter. (1917, c. 200, s. 64; C.S., s. 6831; 1957, c. 136, s. 14; 1975, c. 604, s. 2; 1983, c. 316, s. 3; 2010-193, s. 8; 2011-195, s. 1(a).)

**§ 127A-54. Pretrial confinement; sentences; where executed.**

(a) A defendant may be arrested and placed under pretrial confinement in a local government confinement facility, but a determination shall be made under subsection (b) of this section whether he or she shall remain confined pending the court-martial. If the defendant is not released from confinement, he or she shall be transferred into the custody of the Sheriff of Wake County and confined in the Wake County confinement facility pending trial. All costs of transportation and confinement are to be paid from funds appropriated to the Department of Public Safety as reimbursements to the local government or agency providing the transportation and confinement.

(b) The provisions of Article 26 of Chapter 15A of the General Statutes shall apply to any defendant who has been placed into pretrial confinement, in the same manner as if the defendant had been placed into confinement for an alleged violation of the criminal laws of this State. Nothing in this section is intended to abridge the right of habeas corpus.

(c) Any defendant whose sentence by a military court includes confinement shall be placed into the custody of the Division of Prisons of the Department of Adult Correction. The Division of Prisons of the Department of Adult Correction is authorized to transfer physical custody of the defendant to a local confinement facility. (1917, c. 200, s. 61; C.S., s. 6832; 1975, c. 604, s. 2; 2010-193, s. 9; 2011-145, s. 19.1(g), (h); 2017-186, s. 2(uuuuu); 2021-180, s. 19C.9(rrr).)

**§ 127A-55. Forms for courts-martial procedure.**

In the North Carolina National Guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, as shall be currently in use by the Armed Forces of the United States, with any modifications required by this Chapter. (1957, c. 136, s. 13; 1975, c. 604, s. 2; 1983, c. 316, s. 4; 2009-281, s. 1; 2010-193, s. 10; 2011-195, s. 1(a).)

**§ 127A-56. Powers of courts-martial.**

In the North Carolina National Guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest an accused person and to bring the person before a court for trial whenever the person has disobeyed an order in writing from the convening authority to appear before the court, a copy of the charge or charges having been delivered to the accused with the order, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books, papers, records and other articles subject to a subpoena duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. The presiding officer shall also have power to punish for contempt occurring in the presence of the court. (1917, c. 200, s. 60; C.S., s. 6830; 1957, c. 136, s. 12; 1975, c. 604, s. 2; 1983, c. 316, s. 5; 2009-281, s. 1; 2010-193, s. 11; 2011-195, s. 1(a).)

**§ 127A-57. Execution of processes and sentences.**

All warrants and other processes authorized by this Chapter and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, or State or local law enforcement officer into whose hands they may be placed for service or execution, and the officer shall make return thereof to the officer issuing or imposing the same. The service or execution of process or sentence shall be made by the officer without tender or advancement of fee therefor; but all costs in these cases shall be paid from funds appropriated to the Department of Public Safety. (1917, c. 200, s. 62; C.S., s. 6833; 1973, c. 108, s. 80; 1975, c. 604, s. 2; 2010-193, s. 12; 2011-145, s. 19.1(g); 2011-195, s. 1(a).)

**§ 127A-58:** Repealed by Session Laws 2010-193, s. 13, effective December 1, 2010.

**§ 127A-59. (See note for contingency) Sentences.**

When any sentence to fine or imprisonment is imposed by any military court of this State, it shall be the duty of the military judge, president of the court, or summary court officer, upon the approval of the court's findings and sentence, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, and the terms of the sentence. The trial counsel shall deliver the certificate to the Clerk of the Superior Court of Wake County, and it shall thereupon be the duty of the clerk to take the actions necessary to carry the sentence into execution in the same manner as prescribed by law for the collection of fines, or commitment to service of terms of imprisonment, in criminal cases determined in the courts of this State. The Administrative Office of the Courts shall ensure that the State's criminal history records include pertinent information relating to a court-martial under this Chapter in a like manner as a comparable offense under the State's criminal laws would be recorded. (1917, c. 200, s. 63; C.S., s. 6834; 1973, c. 108, s. 81; 1975, c. 604, s. 2; 2010-193, s. 14; 2011-195, s. 1(a).)

**§ 127A-60. Approval of sentence.**

No sentence imposed by a special or general court-martial of the North Carolina National Guard, not in the service of the United States, shall be executed until approved by the Governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia. (1917, c. 200, s. 65; C.S., s. 6835; 1975, c. 604, s. 2; 2009-281, s. 1; 2010-193, s. 15; 2011-195, s. 1(a).)

**§ 127A-61. Disposition of fines.**

Fines imposed by courts-martial under this Chapter shall be disposed of as prescribed in Article IX, Sec. 7, of the Constitution of North Carolina. (1975, c. 604, s. 2.)

**§ 127A-62. Appeals; discretionary review.**

(a) Jurisdiction. – Court-martial judgments which include a sentence to confinement shall have a right of appeal to the Wake County Superior Court. The provisions of G.S. 15A-1451 shall apply to appeals under this section.

(b) Filing and Service. – An appeal under this section must be made in writing and filed with the Clerk of Superior Court of Wake County within 10 days after the approval of the sentence by the Governor. A copy of the petition shall be filed with the military court and the military trial counsel of record. For the purposes of a filing fee, the appeal shall be treated as an administrative appeal to the Superior Court.

(c) Assertion of Errors. – All errors, including, but not limited to, the following, must be asserted or shall be deemed waived:

(1) Any error of law, including the following:

- a. The court erroneously failed to dismiss the charge prior to the court-martial.
- b. The court's ruling was contrary to law with regard to motions made before or during the trial or with regard to the admission or exclusion of evidence.
- c. The evidence, at the close of all the evidence, was insufficient to justify submission of the case to the court-martial panel, whether or not a motion so asserting was made before verdict.
- d. The court erroneously instructed the court-martial panel.

(2) The verdict is contrary to the weight of the evidence.

(3) For any other cause, the defendant did not receive a fair and impartial trial.

(d) Appointment of Superior Court Judge. – The appeal shall be heard by a judge assigned by the Chief Justice of the North Carolina Supreme Court, to be heard at a session of the Wake County Superior Court designated by the Chief Justice.

(e) Applicable Law. – The presiding judge, in determining whether there were errors, shall apply the law as provided for trial by courts-martial under this Article.

(f) Setting Aside of Findings or Sentence. – The findings or sentence, or both, may be modified or set aside, in whole or in part, by the court on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

(g) Hearings and Rehearings. – The court may remand the matter to the court-martial for evidentiary hearings or other proceedings, to be conducted by a military judge alone, that it deems

necessary prior to the court's final disposition of the case. If the court sets aside the findings or sentence, the court may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the court sets aside the findings and sentence and does not order a rehearing, the court shall dismiss the charges. If the court orders a rehearing, but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(h) Counsel. –

(1) The Staff Judge Advocate of the North Carolina National Guard shall:

- a. Designate a judge advocate who is qualified and certified under Article 27(b) of the Uniform Code of Military Justice, and who is a member of the North Carolina Bar, to represent the defendant.
- b. Designate a judge advocate who is qualified and certified under Article 27(b) of the Uniform Code of Military Justice, and who is a member of the North Carolina Bar, to represent the State.

(2) The counsel designated to represent the defendant under sub-subdivision a. of subdivision (1) of this subsection shall not be the counsel who represented the defendant at the court-martial.

(3) Where a defendant alleges ineffective assistance of prior counsel as a ground for relief, the defendant shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between the defendant and the prior counsel to the extent the defendant's prior counsel reasonably believes the communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the pleadings alleging ineffective assistance of prior counsel, and the Wake County Superior Court need not enter an order waiving the privilege.

(4) The Adjutant General, upon the recommendation of the Staff Judge Advocate, shall place the designated judge advocates described in this subsection onto State active duty for the periods of time necessary for either counsel to provide adequate representation to the respective parties, if regularly scheduled unit training periods are insufficient. The Staff Judge Advocate shall verify to the Adjutant General whether any such additional periods of time are necessary.

(i) Discretionary Review. – Review of decisions by the Wake County Superior Court shall be pursuant to G.S. 7A-31.1.

(j) The rules for practice and procedure for review of courts-martial by the Wake County Superior Court shall be consistent with those prescribed for review of administrative appeals by the Superior Court, except as modified by this section. (2010-193, s. 16; 2011-195, s. 1(a).)

### **§ 127A-63. Adjutant General and National Guard Staff Judge Advocate access to law enforcement and medical examiner records.**

(a) The Adjutant General or the National Guard Staff Judge Advocate may request records of criminal investigations from a law enforcement agency or medical examiner. Unless release is prohibited by court order, the investigating law enforcement agency or medical examiner shall disseminate the requested records or information to the Adjutant General or the National Guard Staff Judge Advocate. Such records shall only be used in a court-martial action or administrative investigation or proceeding involving a member of the National Guard.

(b) Records and information received pursuant to this section shall remain State records and shall be governed by G.S. 127A-17.1, G.S. 132-1.4, and military regulations governing official use or disclosure to servicemembers as required in connection with adjudicative proceedings. (2023-86, s. 5(a).)

**§ 127A-64. Availability of resources for National Guard Family Assistance Centers; report.**

(a) To the extent feasible and practicable, State and local agencies who provide services directed at individuals who have served in the active or reserve components of the Armed Forces of the United States and their families shall make personnel and other resources available to the National Guard Family Assistance Centers.

(b) The Department of Public Safety shall report annually no later than September 1 to the Chairs of the House of Representatives and Senate Appropriations Committees on Justice and Public Safety and to the House of Representatives Committee on Homeland Security, Military, and Veterans Affairs on the activities of the National Guard Family Assistance Centers during the previous fiscal year. This report shall include information on services provided as well as on the number and type of members of the active or reserve components of the Armed Forces of the United States, veterans, and family members served.

(c) The North Carolina National Guard may use funds appropriated to it for Family Assistance Centers for expenses related to support of surviving family members of deceased members of the North Carolina National Guard, including, but not limited to, the costs of providing educational materials; workshops; outreach events; and invitational travel, including per diem and other travel-related expenses. (2011-145, s. 19.1(g); 2011-185, s. 1; 2014-106, s. 2; 2015-241, s. 16B.9.)

**§ 127A-65. List of rights; posting.**

The North Carolina National Guard shall post on its Web site a list of the rights a servicemember or a dependent of a servicemember has under the North Carolina Servicemembers Civil Relief Act and under the federal Servicemembers Civil Relief Act, Chapter 50 of Title 50 of the United States Code. (2019-161, s. 1(c).)

**§ 127A-66. Reserved for future codification purposes.**