

**2013 SENATE JUDICIARY**

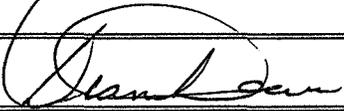
**SB 2073**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2073  
1/14/2013  
Job #17137

Conference Committee

Committee Clerk Signature 

**Minutes:**

*Attached written testimony*

## Relating to the operation of the North Dakota National Guard License plates

### Senator David Hogue - Chairman

**Brigadier General Alan Dohrmann**, Deputy Adjutant General for the State of ND. See written testimony.

**Senator Hogue** - Asks Dohrmann to give examples of conduct that would warrant Article 15.

**Dohrmann** - Replies that Article 15 is used for minor disciplinary infractions. He explains they subscribe to a program of progressive discipline. Article 15 would be for minor misconduct such as being late for work, insubordination to your supervisor, leaving without permission. Appropriate action to take to correct the misconduct but would be inappropriate to bring the matter to a criminal proceeding. He goes on to explain they would like this because their current range of options it is counseling or reprimand or dismissal from the organization. He believes that is not fair to their members. He says it may take one or more attempts to change ones behavior so they become a valued member of the organization. Article 15 would not be considered a criminal conviction but does give the member extra duty or pay deduction or counseling. He explains the motorcycle license plate would be at no extra charge to make for the state. There is room for only be three numbers on the plate so it would be limited to 999.

**Senator Lyson** - Asks if in their policy regarding Article 15 that the charge would come off their record after a certain length of time.

**Dohrmann** - Explains the three kinds of Article 15's. The one used depends of the severity of the conduct.

**Senator Berry** - Asks about the grades of punishment.

**Dohrmann** - Explains there are company grades and field grades. A company grade has a maximum punishment of custody for seven days, for field grade its custody for 30 days. For company grade forfeiture of pay for not more than seven days, a reduction of one grade, extra duty and restriction. For a field grade it would be correctional custody for not more

than 30 days, forfeiture for not more than one half of one month's pay for two months, reduction of one grade, extra duty and restriction. He says that they have no ability to put anyone in protective custody.

**Senator Sitte** - Asks for an instance that someone would request a court martial.

**Dohrman** - Responds by giving an instance of trial by court martial. He says in ND they cannot do a court martial because they wouldn't find a military judge. He explains these are not criminal cases and there is due process throughout with the right to appeal.

Close the hearing on SB2073

### **Discussion**

Senator Lyson says this is just a physical scolding. Senator Armstrong remarks that the military member in these types of situations are afforded more due process than you are in civil court proceedings. Senator Hogue says in the private sector if you are in at will employee you get nothing, that you can be dismissed for any reason. He goes on to say from the Guard's perspective is the ability to have that tool so they can discipline that soldier.

Senator Lyson moves a do pass  
Senator Armstrong seconds  
Vote on do pass 7 - 0  
Senator Armstrong will carry



**REPORT OF STANDING COMMITTEE**

**SB 2073: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2073 was placed on the  
Eleventh order on the calendar.

**2013 HOUSE JUDICIARY**

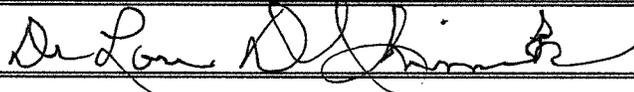
**SB 2073**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2073  
Job #20036  
DATE: March 18, 2013

Conference Committee



## Explanation or reason for introduction of bill/resolution:

Relating to the operation of the North Dakota National Guard and National Guard license plates.

## Minutes:

Testimony 1, Handout 2,

**Chairman Kim Koppelman:** Opens the hearing on SB 2073.

**Alan Dohrmann:** (See testimony handout #1) 0:34 - 05:37

**Rep. Andy Maragos:** Article 15 issue; don't Commanders have the ability to use Article 15? Can you site me a case where your resources or were you just referring to court martial in the resource aspect.

**Alan Dohrmann:** We have no recorded cases. We do not have the ability to convene a trail by court martial because of that fact. If the service requests a trail by court martial we will not be able to convene one. Because we are a National Guard state we do not have military judges.

**Rep. Lois Delmore:** Can you tell me disciplinary actions could be taken to get this bill forward the floor without the court martial?

**Alan Dohrmann:** (See handout #2) Went over the handout with penalties.

**Rep. Andy Maragos:** If a National Guard troop got a DUI not on active duty, is that the extent that he is taken to task by the civil authority; does he still pay a penalty with the guard then also?

**Alan Dohrmann:** He could DUI's we do get them the problem if we have to go to a letter of reprimand to dismissal that is not fair. We are looking for the same range of options that we have available on the civil side. If misbehavior is addressed promptly, transparently after it occurs there is a perception out there that the commander did nothing. On Article 15 could

be shared with the world that this guy and gal misbehaved and here is what we did, but a letter of reprimand cannot.

**Rep. Kathy Hogan:** Can you give me an example of minor disciplinary infractions. What are we talking about?

**Alan Dohrmann:** DUI, sexual harassment in the military. If you had a soldier or airman that was engaged in an inappropriate conduct but was on the left side of the sale this may be a tool to correct that behavior before it goes somewhere else. We are only dealing with minor offenses otherwise it needs to be turned over to law enforcement.

Opposition: None

Neutral: None

Hearing closed.

**Do Pass Motion Made by Rep. Boehning; Seconded by Rep. Delmore**

**Vote: 11 Yes 0 No 3 Absent Carrier: Rep. Steiner**

Closed.

Date: 3-18-13  
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2073**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Boehning Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	//				
Rep. Karen Karls	/				
Rep. William Kretschmar					
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur	/				
Rep. Vicky Steiner	//				
Rep. Nathan Toman	/				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Steiner

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2073: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS**  
(11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2073 was placed on the  
Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2073**

**TESTIMONY OF  
BRIGADIER GENERAL ALAN DOHRMANN  
THE DEPUTY ADJUTANT GENERAL  
BEFORE THE  
JUDICIARY COMMITTEE  
JANUARY 14, 2013  
SENATE BILL 2073**

Mr. Chairman and Members of the Committee:

I am Brigadier General Alan Dohrmann, Deputy Adjutant General for the State of North Dakota and I am here to speak in support of Senate Bill 2073.

SB 2073 has four sections. Section one updates, clarifies and makes one substantive change to our state’s Uniform Code of Military Justice (UCMJ). In *State v. Julson*, the North Dakota Supreme Court held that while the state can incorporate federal law by reference, it can only adopt federal law in existence at the time of the enactment of the state law. This has required us to continuously update our state UCMJ to reflect the current version of the federal Manual for Courts-Martial (MCM). In the case at hand, we are incorporating by reference the 2012 edition of the federal MCM.

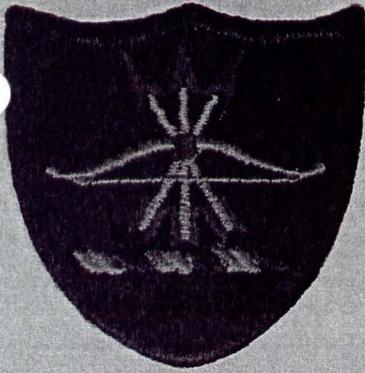
Section one also clarifies the applicability UCMJ to “military duty”, to include state active duty. While the state UCMJ has always applied to military duty, including state active duty, this was not clearly understood by all practitioners. This change will make the applicability readily apparent to all.

Finally, section one provides commanders with the authority to administer nonjudicial punishment, referred to as Article 15, for offenses committed on military duty without the ability for the service member to demand a trial by courts-martial. An Article 15 permits commanders to resolve allegations of minor misconduct against a member without resorting to higher forms of discipline, such as courts-martial. While a trial by courts-martial is available to service members in lieu of Article 15 non-judicial punishment in most cases, the MCM recognizes that there are situations when it is not practical to provide this option. The Navy is not required to provide an option for trial by courts-martial for members aboard ship. This recognizes the resource difficulties of holding a trial aboard ship, where judges, panel members, and support personnel are not readily available. We have the same resource issue in the North Dakota National Guard which has resulted in us not being able to use Article 15 procedures. Article 15’s are important tools for maintaining good order and discipline; without them, a commanders choices for discipline goes straight from letters of admonition and reprimand straight to dismissal with no intermediate tools available to address personnel issues and maintain unit cohesion. Arguably, this is not fair to either the commander or the service member. Over ten other states have implemented similar process for their national guard. Additionally, three states, to include North Dakota, have similar legislation pending.

Section two of SB 2073 updates the Military Civil Relief Act. This act incorporates by reference the federal Servicemembers Civil Relief Act. The bill updates state law to reference the most current version of the federal act in existence and with the proper citation.

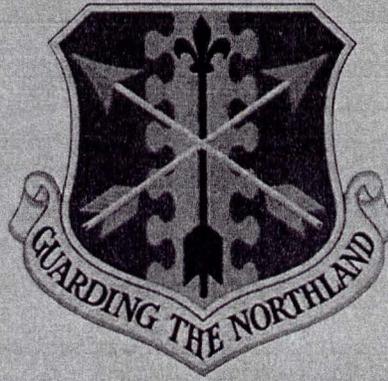
Section three updates the adjusted compensation program, or veteran's bonus. Language was added to the definition of "veteran" to clarify that this definition only applies to the eligibility for this program. This is not a substantive change. There are many definitions of veterans in North Dakota Century Code, as it pertains to that specific section of law. This addition makes clear that this definition of veteran only applies to the adjusted compensation program. This section of law also incorporates two federal statutes that activate national guard members into federal service.

The final section of SB 2073 provides for national guard license plates for motorcycles. This is a frequent request from our members and retirees. This bill would provide the authority for such a license plate.



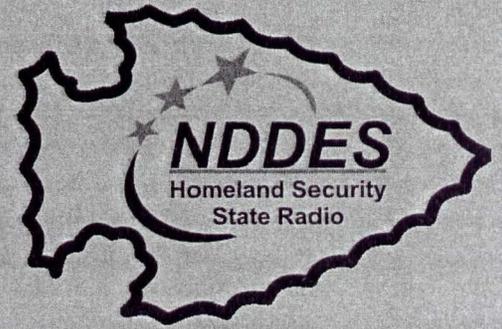
*Army National Guard*

*“The Straight Arrows”*



*Air National Guard*

*“The Happy Hooligans”*



*Department of  
Emergency Services  
Homeland Security &  
State Radio*

*The*  
***Office of the  
Adjutant General***

*Testimony of  
Brigadier General Alan Dohrmann  
Deputy Adjutant General*

*before the*

*House Judiciary  
Committee  
March 18, 2013*

***SENATE BILL 2073***

**TESTIMONY OF  
BRIGADIER GENERAL ALAN DOHRMANN  
THE DEPUTY ADJUTANT GENERAL  
BEFORE THE  
JUDICIARY COMMITTEE  
MARCH 18, 2013  
SENATE BILL 2073**

Mr. Chairman and Members of the Committee:

I am Brigadier General Alan Dohrmann, Deputy Adjutant General for the State of North Dakota and I am here to speak in support of Senate Bill 2073.

SB 2073 has four sections. Section one updates, clarifies and makes one substantive change to our state's Uniform Code of Military Justice (UCMJ). In *State v. Julson*, the North Dakota Supreme Court held that while the state can incorporate federal law by reference, it can only adopt federal law in existence at the time of the enactment of the state-law. This has required us to continuously update our state UCMJ to reflect the current version of the federal Manual for Courts-Martial (MCM). In the case at hand, we are incorporating by reference the 2012 edition of the federal MCM.

Section one also clarifies the applicability UCMJ to "military duty", to include state active duty. While the state UCMJ has always applied to military duty, including state active duty, this was not clearly understood by all practitioners. This change will make the applicability readily apparent to all.

Finally, section one provides commanders with the authority to administer nonjudicial punishment, referred to as Article 15, for offenses committed on military duty; without the ability for the service member to demand a trial by courts-martial. An Article 15 permits commanders to resolve allegations of minor misconduct against a member without resorting to higher forms of discipline, such as courts-martial. While a trial by court-martial is available to service members in lieu of an Article 15, in most cases, the MCM recognizes that there are situation when it is not practical to provide this option. The Navy is not required to provide an option for trial by courts-martial for members aboard ship. This recognizes the resource difficulties of holding a trial aboard ship, where judges, panel members, and support personnel are not readily available. We have the same resource issue in the North Dakota National Guard which has resulted in us not being able to utilize the Article 15 procedures. Article 15's are important tools for maintaining good order and discipline; without them, a commander's choices for discipline range from letters of admonition and reprimand straight to dismissal with no intermediate tools available to address personnel issues and maintain unit cohesion. Arguably, this is not fair to either the commander or the service member. Over ten other states have implemented similar processes for their national guard. Additionally, three states, to include North Dakota, have similar legislation pending.

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The final section of SB2073 provides for a national guard license plates for motorcycles. This is a frequent request from our members and retirees. This bill would provide the authority for such a license plate.

Mr. Chairman and members of the committee, I ask for your favorable consideration of SB 2073.

### Commanding Officer's Non-Judicial Punishment (NJP)

Any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without intervention of a court-martial:

Maximum punishment limitations apply to each NJP action and not to each offense. Policy dictates that all known offenses of which the accused is suspected should ordinarily be considered in one single article 15 action.

	Commanding Officer O-1 to O-3	Commanding Officer O-4 to O-6	General or Flag Rank in Command
<b>Officer Accused</b>	Admonition or reprimand.	Admonition or reprimand.	Punitive admonition or reprimand.
	Restriction not more than 15 days.	Restriction not more than 30 days.	Arrest in quarters: not more than 30 days.
			Restriction to limits: not more than 60 days.
			Forfeiture of pay: not more than ½ of 1 month's pay per month for 2 months.

Non-Judicial punishment can only be imposed by Commanding Officer this may not be delegated.

	COMPANY GRADE	FIELD GRADE
	Commanding Officer O-3 and below	Commanding Officer O-4 and above
<b>Enlisted Accused</b>	Admonition or reprimand.	Admonition or reprimand.
	Correctional custody: not more than 7 days. <sup>1</sup>	Correctional custody: not more than 30 days. <sup>1</sup>
	Forfeiture: not more than 7 days' pay.	Forfeiture: not more than ½ of 1 month's pay per month for 2 months.
	Reduction: one grade, not imposable on E-7 and above (Navy, Army, and Air Force) or on E-6 and above (Marine Corps), if rank from which demoted is within the promotion authority of the OIC.	Reduction: one grade, not imposable on E-7 and above (Navy, Army, and Air Force) or on E-6 and above (Marine Corps).
	Extra duties: not more than 14 days. <sup>2</sup>	Extra duties: not more than 45 days. <sup>2</sup>
	Restriction to limits: not more than 14 days. <sup>2</sup>	Restriction to limits: not more than 60 days. <sup>2</sup>

<sup>1</sup> Not possible for an Art. 15 issued in a state status; could only result from concurrent civilian prosecution.

<sup>2</sup> Limit applicability; would have to be accomplished with statutory drill and annual training period.

## Definitions:

**Admonition and reprimand:** Punitive censure for officers must be in writing, although it may be either oral or written for enlisted personnel. It should be noted that reprimand is considered more severe than admonition.

**Arrest in quarters:** The punishment is imposable only on officers. It is moral restraint, as opposed to a physical restraint. It is similar to restriction, but has much narrower limits. The limits of arrest are set by the officer imposing the punishment and may extend beyond quarters. The term "quarters" includes military and private residences. The officer may be required to perform his regular duties as long as they do not involve the exercise of authority over subordinates.

**Restriction:** Restriction also is a form of moral restraint. Its severity depends upon the breadth of the limits as well as the duration of the restriction. If restriction limits are drawn too tightly, there is a real danger that they may amount to either confinement or arrest in quarters, which in former case cannot be imposed as NJP and in the latter case is not an authorized punishment for enlisted persons. As a practical matter, restriction means that an accused will be restricted to the limits of the base except where the use of recreational facilities might be further restricted. Restriction and arrest are normally imposed by a written order detailing the limits thereof and usually require the accused to log in at certain specified times during the restraint.

**Forfeiture:** Forfeiture applies to basic pay and to sea or foreign duty pay, but not to incentive pay, allowances for subsistence or quarters, etc. "Forfeiture" means that the accused forfeits monies due him in compensation for his military service only; it does not include any private funds. This distinguishes forfeiture from a "fine," which may only be awarded by courts-martial. The amount of forfeiture of pay should be stated in whole dollar amounts, not in fractions, and indicated the number of months affected (e.g.; "to forfeit \$50.00 pay per month for two months"). Where a reduction is also involved in the punishment, the forfeiture must be premised on the new lower rank, even if the reduction is suspended.

**Extra duties:** Various types of duties may be assigned, in addition to routine duties, as punishment. However, the MCM prohibits extra duties which constitute a known safety or health hazards, which constitutes cruel and unusual punishment, or which are not sanctioned by the customs of the service involved. Additionally, when imposed upon a petty or noncommissioned officer (E-4 and above), the duties cannot be demeaning to his/her rank or position.

**Reduction in grade:** In the Army and Air Force, personnel in grades of E-5 and E-6 can only be reduced by one grade. Personnel in grades of E-4 and below may be reduced up to two grades.

**Correctional Custody:** Correctional custody is a form of physical restraint during either duty or non-duty hours, or both, and may include hard labor or extra duty. Awardees may perform military duty, but not watches, and cannot bear arms or exercise authority over subordinates.