

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

August 31, 2015

**SUBJECT:** Military Code of Justice  
(CSHB 126( ) ; Work Order No. 29-LS0473\P)

**TO:** Representative Gabrielle LeDoux  
Attn: Lisa Vaught

**FROM:** Megan A. Wallace  
Legislative Counsel

Enclosed please find the draft bill you requested. I made the changes you requested, but please be aware of the following drafting issues:

1. I revised AS 26.05.380 as requested. You only included three specific items in this provision allowing regulations. Do you want to include a provision, similar to AS 26.05.380(b)(12) from the "E" version, that generally allows the adjutant general to "include other provisions necessary to provide for the administration of military justice."? If so, please advise. Otherwise, the regulations will only contain nonjudicial punishment and rules of pretrial, trial, and post-trial procedure. Other items would not be permitted to be added by regulation.
2. On August 18, 2015, you expressed a desire that this office not change any language provided for the draft, which I advised is contrary to our legislative drafting process and the Manual of Legislative Drafting.<sup>1</sup> While I understand that

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<sup>1</sup> Uniform Rule 10 states:

Rule 10. Drafting Manual. The legislative drafting manual prepared by the enrolling secretary of the legislature and the revisor of statutes and adopted by the Legislative Council is to be followed by all officers and employees of the legislature in the preparation, processing, and disposition of all legislative documents and records.

The drafting manual quotes Rule 10 on page 3 and states the requirement to follow the manual as follows:

Therefore, persons drafting bills, resolutions, or amendments must follow this manual as required by law and rule to ensure that their documents will

the language you have previously provided is model language proposed for use in other jurisdictions, and also contains language consistent with the Uniform Code of Military Justice, generally this is not a sufficient reason to deviate from the way in which Alaska statutes are drafted, as this can create ambiguity in the way that statutes are later interpreted. Model acts (as opposed to uniform acts or compacts, where uniformity of language and style is important) may generally be altered or changed to fit the drafting style of the state adopting the act to prevent such ambiguities.

3. For the reasons stated above, I did not make any changes to the draft bill relating to the term "nonjudicial punishment." However, given the provisions relating to "punishment" in AS 26.05.513, should "nonjudicial punishment" be changed to "nonjudicial discipline"?
4. After further review, in AS 26.05.425(b), it is unclear what you mean by a "minor offense normally tried by a summary court-martial or subject to the code of military justice." Should the term "minor offense" be revised, or can this subsection be clarified?
5. Also, who is the "reviewing authority" in AS 26.05.520? I recommend this provision be revised to replace "reviewing authority" with the name of a proper entity. It is also unclear what you mean by "may approve or affirm, instead."
6. I made the change requested to AS 26.05.468(c). However, I am unsure who "the authority investigating" the accused is referring to. Is this different than an "investigating officer"? If so, does AS 26.05.468(a) need to be revised? I would recommend clarifying the issue.
7. I deleted the definition of "blood alcohol content limit" as instructed in AS 26.05.611. However, there was an internal reference to the definition in AS 26.05.611(b)(2), so I inserted the contents in that paragraph. Please review to ensure I captured your intent in this section.
8. As it relates to the definitions section, do you want the definition of "code of military justice" in AS 26.05.900(5), to include the regulations adopted under AS 26.05.380? Also, the term "national or state security," defined in AS 26.05.900(15), is only used one time in the draft bill. Do you still want to define "national security"?

Representative Gabrielle LeDoux

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Finally, please be advised that the enclosed draft does not address the issues raised in items number 3, 4, 5, and 8 - 10 of my memorandum dated August 10, 2015.

If you have any additional changes, or if I can be of further assistance, please advise.

MAW:dla

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Enclosure