



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Military and
Veterans' Affairs**

Office of the Commissioner

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The Honorable Dan Saddler, Representative
Alaska State House of Representatives
Alaska State Capitol 428
Juneau, AK 99801

Dear Representative Saddler:

Last week, in a conversation on HB 307, your staff posited a situation wherein an Alaska Organized Militia member took an over-the-counter or a prescribed medication and revealed that fact to his or her commanding officer, and the commander required the Soldier to undertake his/her duties regardless. Your staff asked if there would be consequences for the servicemember in the event s/he was impaired or otherwise unable to fully perform his/her duties competently and safely.

In light of HB 307, the following analysis is only in regard to the proposed amendment to AS 26.05.860. The amendment states a member of the militia, who, as a result of indulgence in any alcoholic beverage or drug, is unable to perform the member's duty, may be punished as directed by a court-martial. Under the hypothetical situation presented here, this analysis will not include alcoholic beverages and will be in the context of a "drug."

First, the situation envisioned did not indicate the service member was unable to perform his/her duties. The mere fact that the service member has taken a medication does not mean s/he cannot perform his/her duties.

Assuming, arguendo, the service member believes s/he is unable to perform his/her duties, but the commander still requires the service member to undertake those duties. By including the amendment to the Alaska Code of Military Justice provision formerly known as "drunk on duty," a recognized defense is provided to the accused, i.e., if the accused is known by superior authorities to be drunk, yet is thereafter ordered to assume that duty anyway, or if the drunkenness results from an accidental overdose administered for medicinal purposes, the accused will have a viable defense.

Here, given the defense stated above exists, neither a prosecutor nor the commander would have probable cause to bring the case to either court-martial or non-judicial punishment.

I hope this information is helpful. Please let me know if you have further questions.

Sincerely,

Robert A. K. Doebl
Deputy Commissioner

cc: Representative Chris Tuck, Chairman
House Special Committee on Military and Veterans' Affairs