



Representative Chris Tuck

House Majority Leader

Serving House District 23 • Dimond Estates, Foxridge, Taku, Campbell, Northwood, and Windemere

House Bill 307 ver U Military Justice and Militia Civil Relief Sectional Analysis

Section 1. Amends AS 12.63.100(1) to include within the definition of aggravated sexual offense an offense under AS 26.05.890 if the person engaged in or attempted to engage in sexual penetration and an offense under AS 26.05.893 if the prohibited sexual activity in which the militia member engaged or attempted to engage is sexual penetration.

Section 2. Amends AS 12.63.100(2) to include within the definition of child kidnapping an offense, attempt, solicitation, or conspiracy to commit an offense under AS 26.05.935(b) if the member of the militia commits an enumerated offense of kidnapping punishable under Article 134 of the Uniform Code of Military Justice (UCMJ) and the victim was under 18 years of age at the time of the offense.

Section 3. Amends AS 12.63.100(6) to include within the definition of sex offense indecent exposure under AS 26.05.900(c) and other qualifying conviction under AS 26.05.890 and 26.05.893 as specified. Adds a limitation on the requirement to register under AS 26.05.893 similar to the limitation on the registration requirement on AS 26.05.890. This ensures the registration requirements apply to similar offenses as those under the Alaska criminal code and are not overly broad.

Section 4. Amends AS 12.63.100 by adding new paragraphs that define “sexual contact” and “sexual penetration” to have the same meaning as given these terms in AS 11.81.900.

Section 5. Amends AS 12.80.060(g) to direct the Department of Public Safety to collect fingerprints due to a violation of the Military Code of Alaska.

Section 6. Amends AS 18.65.087(a) to include a court judgment that the Department of Public Safety receives from the Department of Military and Veterans Affairs for convictions under AS 26.05.890(h), 26.05.893(d), 26.05.900(e), or 26.05.935(d) as information for the sexual offender registry.

Section 7. Amends AS 26.05.135 to extend the benefits of the Servicemembers Civil Relief Act, especially those pertaining to consumer transactions, to all members of the Alaska Organized Militia (AOM), i.e., the Alaska Army National Guard, the Alaska Air National Guard, the Alaska Naval Militia, and the Alaska State Defense Force.

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Section 8. Amends AS 26.05.135 by adding new subsections: (b) allowing Servicemembers to terminate of certain contracts for consumer services if ordered to relocate; (c) directing that Servicemembers must furnish service providers with written notice of contract termination and written proof of relocation orders; (d) allowing Servicemembers to reinstate terminated contracts upon separation from the AOM; (e) prohibiting service providers from charging a Servicemember for terminating a contract and releasing Servicemembers from any payment obligation after the termination; and (f) defining militia members as members of the AOM, and the organized militia as including the Alaska (Army and Air) National Guard, Alaska Naval Militia, and Alaska State Defense Force and defining servicemember of the armed forces of the United States or a member of the organized militia of the state.

Section 9. Amends AS 26.05.380 (b) by striking language reserving Servicemembers' ability to reject non-judicial punishment and opt instead for court-martial, essentially restoring the "no turn-down" clause proposed in the original ACMJ update of 2015-16.

Section 10. Amends AS 26.05.555 to reflect additional language in the amended Rules for Courts-Martial 201 (c) that provides judges may hold a person in contempt of court for willfully disobeying a court-martial order or creating a disturbance during proceedings.

Section 11. Amends 26.05.590(a) to change the basis of defining ACMJ offenses as felony or misdemeanor to the possible penalty rather than the actual penalty. This corresponds to the definition of felony and misdemeanor crimes in common law and the Alaska criminal code.

Section 12. Amends AS 26.05 to add a new section AS 26.05.697 making failing to reveal or concealing from authorities serious offenses committed by others offenses, and militia members committing these offenses may be punished by up to three years of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

Section 13. Amends AS 26.05.700 to allow an accused to be found guilty of lesser offenses necessarily included in offenses charged or of attempts to commit either, regarding offenses designated by the President in an appendix in the most recent Manual for Courts-Martial.

Section 14. Amends AS 26.05.715 to add a new subsection (c) prohibiting a member of the militia from soliciting or advising another person to commit an offense under this chapter, and making militia members committing such offenses subject to punishment by confinement for up to the maximum punishment of the underlying offense, separation up to dishonorable discharge, and other punishment as a court-martial may direct.

Section 15. Amends AS 26.05 by adding new section AS 26.05.737 prohibiting militia members from wrongfully manipulating, creating, using, selling, or otherwise falsifying official identifications, passes, permits, or certificates and making militia members committing these offenses subject to punishment up to one year confinement, up to dishonorable discharge and other punishment as a court-martial may direct.

Section 16. Amends AS 26.05.740 to specify intentionally or wrongfully jumping into the water from a vessel in use by the armed forces so as to miss a transportation movement required by duty is an offense and a militia member committing such an offense is subject to punishment up to one year confinement, up to dishonorable discharge, and as a court-martial may direct.

Section 17. Amends AS 26.05 by adding new section AS 26.05.767 describing impersonation of officers, non-commissioned officers, petty officers, agents, or officials, and AS 26.05.768 designating wearing unauthorized insignias, decorations, badges, ribbons, devices, or lapel buttons as offenses, and militia members committing these offenses are subject to punishment as courts-martial may direct.

Section 18. Amends AS 26.05 by adding new section AS 26.05.785 designating a militia member who engages in inappropriate release of a prisoner or unlawfully drinking an alcoholic beverage with a prisoner is subject to punishment up to one year confinement, by separation up to dishonorable discharge, and as a court-martial may direct.

Section 19. Amends AS 26.05 by adding new section AS 26.05.793 making wrongful interference with an adverse administrative proceeding an offense, and a militia member committing such an offense may be subject up to one year confinement, by separation up to dishonorable discharge, and as other punishment as a court-martial may direct.

Section 20. Amends AS 26.05 by adding new section AS 26.05.796 designating a militia member engaging in wrongful refusal to testify to an official military proceeding as subject up to one year confinement, separation up to dishonorable discharge, and by punishment as a court-martial may direct. Adds a new section AS 26.05.798 prohibiting retaliation against a person for reporting or planning to report a criminal offense, and making militia members who commit such offenses subject up to one year confinement, separation up to dishonorable discharge, and punishment as courts-martial may direct.

Section 21. Amends AS 26.05 by adding new section AS 26.05.833 prohibiting certain offenses against correctional custody and restriction, including escape and exceeding the limits of physical restriction, and making militia members committing such offenses may be punished up to one year confinement, separation up to dishonorable discharge, and other punishment as a courts-martial may direct.

Section 22. Amends AS 26.05.835 to add a new subsection (b) providing a militia member violating or falsely making an official oath may be punished up to one year confinement, separation up to dishonorable discharge, and other punishment as a courts-martial may direct.

Section 23. Amends AS 26.05.855(b) to make a conforming change to remove the reference of a controlled substance in AS 26.05.870 (c), the definition of a controlled substance was moved to the definition section in AS 26.05.990.

Section 24. Amends AS 26.05.855(c) to make a conforming change to remove the reference of a controlled substance in AS 26.05.870 (c), the definition of a controlled substance was moved to the definition section in AS 26.05.990.

Section 25. Amends AS 26.05.860 changing the offense of “Drunk on Duty” to “Drunkenness And Other Incapacitating Offenses” offenses to include incapacitation due to indulgence in any alcoholic beverage or any drug, and making militia members who commit such offenses subject to punishment up to one year confinement, separation up to dishonorable discharge, and other punishment as a courts-martial may direct.

Section 26. Amends AS 26.05.860 by adding new subsection (b) directing a member of the militia, while in status as a prisoner is drunk or under the influence of a controlled substance without a valid prescription, may be punished up to one year confinement, separation up to dishonorable discharge, and other punishment as a court-martial may direct.

Section 27. Amends AS 26.05.865 to include sentinels loitering or wrongfully sitting down on duty or is unable to perform their duty as a result from any alcoholic beverage or drug may be punished of not more than ten years, up to dishonorable discharge and other punishment as a court-martial may direct if the offense is committed in time of war or emergency described in AS 26.05.070, but if the offense is committed at any other time punishment may be up to one year confinement, separation up to dishonorable discharge, and other punishment as a court-martial may direct.

Section 28. Amends AS 26.05 by adding new section AS 26.05.867 directing militia members engaged in improper behavior toward a sentinel or lookout are subject to punishment up to dishonorable discharge, and by such other punishment without confinement, as a court-martial may direct.

Section 29. Amends AS 26.05.890(a) to enumerate the offenses for which militia members would be guilty of sexual assault and subject to punishment up to ten years confinement, separation up to dishonorable discharge and as punishment a court-martial may direct.

Section 30. Amends AS 26.05.890 by adding news subsections (g) defining when court-martial convening authorities may reduce, commute, or suspend sentences imposed by court-martial for offenses of sexual assault, and (h) requiring courts-martial to provide offenders convicted of sexual assault with information regarding sex offender registration under AS 12.63.010.

Section 31. Amends AS 26.05 by adding new section AS 26.05.893 describing prohibited activities between militia members in positions of special trust and military recruits, trainees, and subordinates, and prescribing such offenses are subject to punishment by up to five years confinement, separation up to dishonorable discharge, and by such punishment as a court-martial may direct. AS 26.05.893 specifies consent is not a defense for any conduct at issue in a prosecution under this statute.

Section 32. Amends AS 26.05 by adding new section AS 26.05.897 defining the offenses of assault and aggravated assault, and specifying militia members committing these offenses are subject to punishment up to one year confinement, separation up to dishonorable discharge, and such other punishment as a court-martial may direct for assault and for aggravated assault punishment may be up to five years of confinement, up to dishonorable discharge and other punishment as directed by court-martial.

Section 33. Amends AS 26.05.900(a) to include broadcasting and distribution of indecent recordings as described in this section as offenses for which militia members would be subject to punishment up to seven years confinement, up to dishonorable discharge and by such other punishment a court-martial may direct.

Section 34. Amends AS 26.05.900(d) by adding a new paragraph defining “recording” as that contained in the 2016 Amendment to article 120c of the UCMJ, “a still or moving visual image captured or recorded by any means,” and “without the other person’s consent” as having the same meaning as given to “without consent” in AS 11.41.470.

Section 35. Amends AS 26.05.900 by adding new section (e) requiring courts-martial to provide offenders convicted of sexual assault with information regarding sex offender registration under AS 12.63.010.

Section 36. Amends AS 26.05 by adding new section AS 26.05.913 making militia members engaged in willfully and unlawfully manipulating public records with ill intent subject to punishment up five years of confinement, separation up to dishonorable discharge, and other punishment as directed by a court-martial.

Section 37. Amends AS 26.05.935 by adding new subsection (d) requiring offenders convicted of enumerated offenses under (b) of this section to register as sex offenders under AS 12.63, and requiring courts-martial to provide offenders with information regarding sex offender registration.

Section 38. Amends AS 26.05 by adding new sections AS 26.05.940 prohibiting willful and intentional misuse of government computers, programs, codes, and data, and AS 26.05.945 prohibiting knowing and willful violation of the limits of a medical quarantine, and making militia members engaged in such offenses subject to punishment by confinement, separation up to dishonorable discharge, and other punishment as directed by a court-martial.

Section 39. Amends AS 26.05.990 to include the definition of a controlled substance. The definition was originally located in AS 26.05.870(c).

Section 40. Amends AS 44.41.035(b) to instruct the Department of Public Safety to collect DNA evidence of a person committed of a crime against a person or felony under AS 26.05, the Alaska Military Code of Justice.

Section 41. Repeals AS 26.05.870 (c).

Section 42. Amends the uncodified law of the State of Alaska to reconcile the generally equivalent military and civilian offenses and specify the dates the new measures above will apply to cases involving these offenses.

Section 43. Amends the uncodified law of the State of Alaska to allow this Act to take effect only after The Adjutant General (TAG) notifies the revisor of statutes on or before 1 January 2019 the President of the United States has signed an Executive Order designating the effective date, under the National Defense Authorization Act, of the amendments to the UCMJ made by the Military Justice Act of 2016.

Section 44. Amends the uncodified law of the State of Alaska to allow Sections 1-4, 6, 9, 10, 12-39, 41, and 42 (b)-(d) of this Act to take effect only if TAG notifies the revisor of statutes as prescribed in Section 43 above.

Section 45. Specifies if Sections 1-4, 6, 9, 10, 12 – 39, 41, and 42 (b) – (d) of this Act take effect under Section 44 above, they take effect 1 January 2019.

Section 46. Establishes 1 July 2018 as this Act’s effective date, except as provided in Section 38 above.

*Sectional prepared by Department of Military and Veterans Affairs and Kendra Kloster with Rep. Tuck’s office