

# CSHB 126 (JUD) am

## Alaska Code of Military Justice

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WHAT IT IS, WHY WE NEED IT, AND HOW TO USE IT

# How We Got Here

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- The National Guard Bureau's Office of Complex Investigations (OCI) issued a report in Sep 2014.
- The report made several findings and recommendations.
- In regard to Military Justice the report stated the following:
  1. The current Alaska Military Code “lacks teeth.” It could not be used for civilian like offenses that affect the discipline of a unit
  2. No record of an ACMJ court-martial since the current code's inception in 1955
  3. Most common tool used for discipline was administrative
  4. Lack of confidence in the military justice system
  5. Nonjudicial punishment has “no utility” if Members request Court-Martial and Commanders don't go to Court-Martial

# Moving Forward

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1. This version of HB 126 is supported by the DMVA.
2. DMVA is preparing implementing regulations to include regulations for Nonjudicial Punishment (NJP).
3. DMVA will be ready to implement in July 2016.

# 3 Tools for Military Discipline

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“Discipline is the soul of an Army.” – George Washington

1. Code of Military Justice to include Courts-Martial and Nonjudicial punishment
2. Administrative Discipline (Separations, Rank Reduction, Letters of Reprimand)
3. Alaska Criminal Code (Civilian Crimes)

# Key Points on HB 126 & ACMJ

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- Based on principles of Military Law arising from the well established federal Uniform Code of Military Justice (UCMJ)
- Derived from best practices of other states' National Guard and the National Guard Bureau's Model Code
- Statute and regulations addresses constitutional requirements for Due Process
- Does NOT replace civilian criminal law BUT addresses Military Offenses and civilian like offenses that affect military good order and discipline
- Most offenses will be adjudicated through Nonjudicial Punishment
- The most serious offenses will be adjudicated through Court-Martial

# Concurrent Offenses – Offenses that are both Civilian and Military

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- Civilians have right of first refusal
- Court-Martial may create double-jeopardy
- Need affirmative statement of non-prosecution to proceed to Court-Martial
- Nonjudicial Punishment does NOT create double jeopardy

# ACMJ Basics

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- A code of offenses that applies to the State Military Forces
- Offenses adjudicated through
  - ★ ○ Courts-Martial (General, Special, and Summary)
  - Nonjudicial Punishment (NJP) – Minor Offenses
- Offenses and punishments are stated in the Code
- Provides framework for HOW we can conduct Courts-Martial
- Authorizes Regulation for Nonjudicial Punishment. Regulation lays out HOW a commander can NJP a Servicemember and what are the MAXIMUM PUNISHMENTS

# The State Militia

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## Organized Militia

1. Alaska National Guard
2. Alaska Naval Militia
3. Alaska State Defense Force

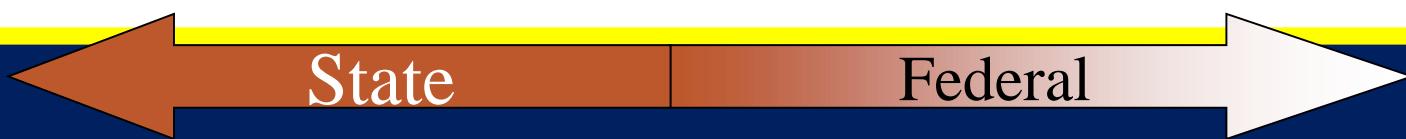


## Unorganized Militia

- Everyone else above the age of 17 and not in the organized militia

# National Guard Duty Status

	<b><i>State Active Duty</i></b>	<b><i>Title 32</i></b>	<b><i>Title 10</i></b>
<b>Command &amp; Control</b>	Governor	Governor	President
<b>Where</b>	IAW State Law	USA	Worldwide
<b>Pay</b>	State	Federal	Federal
<b>Mission Types</b>	State Emergencies	Training & other federally authorized missions	Overseas training & as assigned after mobilization
<b>Discipline</b>	State Military Justice Code	State Military Justice Code	UCMJ
<b>Examples of Domestic Missions</b>	Forest fires, floods, civil disturbances, search and rescue.	Post 9/11 Airport Security, Hurricane Katrina, Southwest border security.	Air sovereignty, missile defense, guarding DoD infrastructure.
<b>Support Law Enforcement</b>	Yes	Yes	As limited by Posse Comitatus



# What behavior can be punished under the ACMJ?

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## 1. Military Offenses – Bulk of the Punitive Articles

- AWOL
- Drunk on Duty
- Etc.

## 2. Offenses chargeable in both military and civilian court

- DUI
- Sexual Assault

## 3. Conduct that is “counter to good order and discipline” or “brings discredit upon the service.”

- “Article 134” in Federal UCMJ. Called “Section 634” in ACMJ

Specific Offenses are delineated later in the presentation

# 24/7 Jurisdiction

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- AGR (Title 32) = YES
- Dual Status Technician (M-day/DSG) = YES, because of their drilling status
- M-Day/DSG = YES
- Alaska State Defense Force = YES. Same as AKNG because ASDF is part of the organized militia
- State Active – YES. Same as AKNG
- Title 10 = NO JURISDICTION

# Where Does Jurisdiction Attach?

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- Anywhere in the State of Alaska
- Outside the State and on Orders (e.g., official military travel)

BUT

- NOT outside the State and not on orders (e.g., personal travel)

# Nonjudicial Punishment (NJP): Overview

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- Most offenses charged with NJP, not Court-Martial
- Commanders at all levels can use NJP
- Much more efficient than Court-Martial or Administrative Separation/Reduction Boards
- NOT for most serious offenses. For minor offenses

# NJP: Maximum Punishments (partial list)

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## Imposed on enlisted

Company Grade Commander: 7 days pay (AGR); 1 UTA (MDay)  
1 grade reduction (<E5)

Field Grade Commander:  $\frac{1}{2}$  month pay (AGR); 4 UTA (Mday)  
2 grade reduct. (<E5); 1 grade (>E5)

General/Flag Officer/Governor:  $\frac{1}{2}$  month pay (AGR); 4 UTA (Mday)  
2 grade reduct. (<E5); 1 grade (>E5)

## Imposed on officers

Company/Field Grade Commanders: Restrictions for 30 days (AGR); 4 UTA (Mday)

General/Flag/Governor: Restrictions;  $\frac{1}{2}$  month pay (AGR); 1 UTA (Mday)

AGR = Active Guard Reserve (full-time Title 32)

Mday = Traditional Drilling militia member (part-time Title 32 or ASDF)

UTA = Uniform Training Assembly. Part of a drill. 4 hours is 1 UTA. 4 UTAs is one weekend drill

# NJP Cont...: No Turn-Down

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- When presented with NJP, Servicemembers do NOT have the right to demand trial by Court Martial
- Based on experience of other states, lack of JAG resources
- Confinement cannot be ordered under Non-judicial punishment

# Non-Military Crimes that Impact Military Discipline

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- DUI – Max 1 year
- Possession, Use of Controlled Substance – Max 5 years; except Marijuana – No confinement
- Sexual Assault – Max 10 years
- Stalking – Max 3 years
- Other sexual misconduct; indecent viewing; visual recording – Max 1 year
- Larceny or wrongful appropriation – Max 1 year
- Forgery – Max 1 year
- Making, drawing, or uttering a check without sufficient funds – Max 1 year
- Perjury – Max 1 year

# Military Crimes

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- Fraudulent Enlistment, Appointment, or Separation – Max 1 year
- Desertion – Max 1 year
- Absence without Leave – Max 1 year
- Missing Movement – Max 1 year
- Contempt towards officials – No confinement
- Disrespect toward superior officer – No confinement
- Assaulting or willfully disobeying superior commissioned officer – 5 years
- Insubordinate conduct towards a warrant or noncommissioned officer – 2 years

# Military Crimes (cont.)

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- Failure to obey order or regulation – Max 1 year
- Cruelty and maltreatment – Max 1 year
- Mutiny or sedition – Max 10 years
- Resistance, flight, breach or arrest, escape – Max 1 year
- Releasing prisoner without proper authority – Max 1 year
- Unlawful detention – Max 1 year
- Noncompliance with procedural rules – Max 1 year
- Misbehavior before the enemy – Max 10 years

# Military Crimes (cont.)

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- Subordinate compelling surrender – Max 10 years
- Improper use of countersign – Max 10 years
- Forcing a safeguard – Max 10 years
- Captured or abandoned property – Max 10 years
- Aiding the enemy – Max 10 years
- Misconduct as a prisoner – Max 10 years
- False official statement – Max 1 year
- Military property; other than military property; waste spoilage or destruction – Max 1 year

# Military Crimes (cont.)

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- Improper hazarding of vehicle, aircraft, or vessel – Max 1 year
- Drunk on duty – Max 1 year
- Misbehavior of sentinel – Max 1 year
- Malingering – Max 1 year
- Riot or breach of peace – Max 1 year
- Provoking speeches or gestures – No confinement
- Fraud against the government – Max 1 year

# Military Crimes (cont.)

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- Conduct unbecoming an officer – No confinement
- General Article – No confinement
  - Conduct that is prejudicial to good order and discipline; or
  - Conduct of a nature to bring discredit on the militia
  - Examples:
    - Disorderly conduct
    - Fraternization
    - Gambling with a subordinate
    - Pandering and prostitution

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# QUESTIONS?

For further questions please contact:  
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