

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

January 22, 2016

1:04 p.m.

**MEMBERS PRESENT**

Representative Gabrielle LeDoux, Chair  
Representative Wes Keller, Vice Chair  
Representative Neal Foster  
Representative Bob Lynn  
Representative Charisse Millett  
Representative Matt Claman  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Kurt Olson (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 126

"An Act relating to the administration of military justice; relating to the adoption of a code of military justice by the adjutant general; relating to the authority of the adjutant general; relating to appeals of convictions and sentences of courts-martial; establishing the Military Appeals Commission; relating to the detention and incarceration of members of the militia; relating to the jurisdiction of the court of appeals; relating to involuntary commitment for evaluation or treatment of a mental disease or defect before court-martial proceedings; and providing for an effective date."

- MOVED CSHB 126(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 126

SHORT TITLE: CODE OF MILITARY JUSTICE; APPEALS

SPONSOR(s): JUDICIARY

02/25/15	(H)	READ THE FIRST TIME - REFERRALS
02/25/15	(H)	MLV, JUD
03/24/15	(H)	MLV AT 1:00 PM CAPITOL 120
03/24/15	(H)	-- MEETING CANCELED --
03/26/15	(H)	MLV AT 1:00 PM CAPITOL 120
03/26/15	(H)	Heard & Held

03/26/15	(H)	MINUTE (MLV)
03/31/15	(H)	MLV AT 1:00 PM CAPITOL 120
03/31/15	(H)	Moved CSHB 126(MLV) Out of Committee
03/31/15	(H)	MINUTE (MLV)
04/01/15	(H)	MLV RPT CS (MLV) NT 3DP 4AM
04/01/15	(H)	DP: LYNN, LEDOUX, HERRON
04/01/15	(H)	AM: TUCK, GRUENBERG, COLVER, and HUGHES
04/14/15	(H)	JUD AT 1:00 PM CAPITOL 120
04/14/15	(H)	Heard & Held
04/14/15	(H)	MINUTE (JUD)
09/22/15	(H)	JUD AT 1:30 PM Anch LIO AUDITORIUM
09/22/15	(H)	Heard & Held
09/22/15	(H)	MINUTE (JUD)
11/17/15	(H)	JUD AT 1:30 PM ANCH LIO AUDITORIUM
11/17/15	(H)	Heard & Held - Assigned to Subcommittee
11/17/15	(H)	MINUTE (JUD)
01/22/16	(H)	JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

FORREST DUNBAR, Captain  
 Alaska National Guard  
 Office of the Commissioner/Adjutant General  
 Department of Military & Veterans' Affairs  
 Joint Base Elmendorf-Richardson, Alaska  
**POSITION STATEMENT:** Discussed CSHB 126, Version S.

CHRISTOPHER WEAVER, Lieutenant Colonel  
 Alaska National Guard  
 Office of the Commissioner/Adjutant General  
 Department of Military and Veterans' Affairs  
 Joint Base Elmendorf-Richardson, Alaska  
**POSITION STATEMENT:** Discussed HB 126, Version S.

MEGAN WALLACE, Attorney  
 Legislative Legal Counsel  
 Legislative Legal and Research Services  
 Legislative Affairs Services  
 Juneau, Alaska  
**POSITION STATEMENT:** Discussed certain amendments to HB 126,  
 Version S.

NANCY MEADE, General Counsel  
 Administrative Staff  
 Office of the Administrative Director  
 Alaska Court System (ACS)  
 Anchorage, Alaska

**POSITION STATEMENT:** Discussed certain amendments to HB 126, Version S.

**ACTION NARRATIVE**

[1:04:38 PM](#)

**CHAIR GABRIELLE LEDOUX** called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Keller, Foster, Lynn, Millett, Claman, Gruenberg, and LeDoux were present at the call to order.

**HB 126-CODE OF MILITARY JUSTICE; APPEALS**

[1:05:55 PM](#)

CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 126, "An Act relating to the administration of military justice; relating to the adoption of a code of military justice by the adjutant general; relating to the authority of the adjutant general; relating to appeals of convictions and sentences of courts-martial; establishing the Military Appeals Commission; relating to the detention and incarceration of members of the militia; relating to the jurisdiction of the court of appeals; relating to involuntary commitment for evaluation or treatment of a mental disease or defect before court-martial proceedings; and providing for an effective date."

[1:06:24 PM](#)

The committee took a brief at ease.

[1:07:13 PM](#)

REPRESENTATIVE KELLER moved to adopt HB 126, 29-LS0473/S, Wallace, 1/14/16 as the working document. There being no objection, Version S was before the committee.

[1:07:31 PM](#)

CHAIR LEDOUX advised that the committee packets contain Version S, which represents changes discussed on Version G during the previous committee meeting; a copy of the bill highlighting the changes between the versions; an explanation of changes; sectional summary; [1/14/2016] memo regarding Version S from Megan Wallace; and zero fiscal notes. She further advised that

the packets contain separate amendments from Representatives Gruenberg, Keller, and LeDoux.

1:08:29 PM

FORREST DUNBAR, Captain, Alaska National Guard, Office of the Commissioner/Adjutant General, Department of Military & Veterans' Affairs, advised that he believes Version S would set up a functioning system of military justice. He then thanked the committee for its steadfast work on bringing the bill to this level and offered to respond to questions.

CHAIR LEDOUX noted there were no questions from the committee and moved to amendments.

1:11:08 PM

CHAIR LEDOUX moved to adopt Amendment 1, 29-LS0473\S.8, Wallace, 1/20/16, which read: [Due to the length of proposed Amendment 1, it is provided at the end of the minutes for HB 126.]

REPRESENTATIVE MILLETT objected.

CHAIR LEDOUX explained that Amendment 1 allows the court martial more discretion in sentencing than originally stated. For example, she pointed out, page 35, lines 24-26, which read:

... punishment shall be punished by up to one year of confinement, by separation with characterization up to dishonorable discharge, and by such other punishment as a court-martial may direct.

CHAIR LEDOUX explained, currently the bill mandates that there is some confinement, and Amendment 1 makes it discretionary by changing the "shall" to "may," which has been done with all of the offenses.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 1, it necessitated by a change made earlier with regard to how the sentences are spelled out in the code. He further advised that the courts-martial have discretion, but he agreed that it should be explicit in the code.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 1 is adopted.

[1:13:27 PM](#)

CHAIR LEDOUX moved to adopt Amendment 2, 29-LS0473\S.9, Wallace, 1/20/16, which read:

Page 19, line 11:

Delete "before the imposition of nonjudicial punishment"

Insert "not later than two years after commission of the offense if the imposition of nonjudicial punishment is sought"

REPRESENTATIVE MILLETT objected.

CAPTAIN DUNBAR advised the amendment clarifies the statute of limitations with regard to nonjudicial punishment.

CHRISTOPHER WEAVER, Lieutenant Colonel, Alaska National Guard, Office of the Commissioner/Adjutant General, Department of Military and Veterans' Affairs, explained that Amendment 2 clearly states the statute of limitations for both courts-martial being three years, and nonjudicial punishment being two years.

CAPTAIN DUNBAR advised the National Guard agrees with Amendment 2.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no further objection, Amendment 2 is adopted.

[1:13:42 PM](#)

CHAIR LEDOUX moved to adopt Amendment 3, 29-LS0473\S.10, Wallace, 1/20/16, which read:

Page 7, line 4:

Delete "charged against the prisoner"

Insert "for which the prisoner was convicted"

Page 7, line 8:

Delete "charged against the prisoner"

Insert "for which the prisoner was convicted"

REPRESENTATIVE MILLETT objected.

MEGAN WALLACE, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Services, advised that Amendment 3 is a reconciliation of AS 33.30.051 with AS 26.05.428(b)and(c). Alaska Statutes 26.05.428(b) and (c) was amended to reference the convictions of the prisoners "because in AS 33.30.051, which is ... you can see an amendment to that provision on page 59 of the bill. That provision gives the power to Corrections to take custody of a prisoner based on their ... and references a conviction ... and ... before this amendment the existing 26.05.428(b) and (c) referenced the charges that had been filed against the prisoner. So we just reconciled those and we won't reference a conviction in all those sections."

REPRESENTATIVE MILLETT removed her objection.

CAPTAN DUNBAR advised the National Guard agrees with this amendment.

[The committee treated Amendment 3 as adopted.]

[1:15:07 PM](#)

CHAIR LEDOUX moved to adopt Amendment 4, 29-LS0473\S.41, Wallace, 1/20/16, which read:

Page 1, line 8, following "**proceedings;**":

Insert "**amending Rule 6, Alaska Rules of Criminal Procedure;**"

Page 59, following line 28:

Insert a new bill section to read:

"\* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. The provisions of AS 26.05.444 and 26.05.445, enacted by sec. 4 of this Act, have the effect of changing Rule 6, Alaska Rules of Criminal Procedure, by changing the procedure for grand jury proceedings conducted before courts-martial."

Renumber the following bill sections accordingly.

REPRESENTATIVE MILLETT objected.

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said the court system has no objection to this amendment as there is a provision in the bill allowing courts-martial to use the state's grand juries. She noted there is a rule regarding grand juries and the court will decide whether to do direct rule changes to that, or simply note in the rule book that for courts-martial there are some implications from this bill.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 4 is adopted.

[1:18:38 PM](#)

REPRESENTATIVE KELLER moved to adopt Amendment 5, 29-LS0473\S.50, Wallace, 1/20/16, which read:

Page 6, line 8:

Delete the first occurrence of "or"

Insert ", "

Following "person":

Insert ", "

Page 6, line 9:

Delete "commissioned officer"

Insert "member of the militia"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE KELLER referred to page 6, lines 8-9, and stated the way the bill is written it appears the commissioned officer has to physically perform the arrest. Amendment 5 allows that they are a member of the militia, he said.

CAPTAIN DUNBAR advised that the National Guard agrees with the conceptual amendment, and inquired whether there is a draft of the amendment he could review.

[Captain Dunbar was handed Amendment 5.]

CAPTAIN DUNBAR advised he had agreed to this conceptual amendment this morning, and the National Guard supports Amendment 5.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 5 is adopted.

[1:20:50 PM](#)

REPRESENTATIVE KELLER moved to adopt Amendment 6, 29-LS0473\S.51, Wallace, 1/20/16, which read:

Page 19, line 19, following "war":

Insert "declared by the United States Congress"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE KELLER pointed to page 19, line 19, and suggested that following the word "war" to insert "declared by the United States Congress," in order to be consistent with the United States Constitution.

CAPTAIN DUNBAR advised the National Guard agrees with Amendment 6.

REPRESENTATIVE GRUENBERG noted that the intent is to make it easier to proceed with these proceedings in the event something such as war would make it difficult. He asked whether there is any other term of art that should be inserted to make it as realistic as possible.

CAPTAIN DUNBAR stated that the term of art "we have agreed upon" is contingency operations, which is later in the same section. Seldom is war declared by Congress, he explained, and the National Guard wants to be realistic so it included "contingency operations ordered by the President of the United States." He noted, all post-911 conflicts have been conducted in this manner and the combination of war and contingency operations will make this practically effective.

REPRESENTATIVE KELLER requested that he be allowed to go back later and request clarifications from Captain Dunbar.

CHAIR LEDOUX agreed.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 6 is adopted.

[1:23:22 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 7, 29-LS0473\S.2, Wallace, 1/20/16, which read:

Page 2, lines 10 - 12:

Delete "require the person instituting the suit to give security for the payment of costs. If judgment is for the defendant, treble costs shall be assessed against the plaintiff. The defendant in the action shall"

Insert "[REQUIRE THE PERSON INSTITUTING THE SUIT TO GIVE SECURITY FOR THE PAYMENT OF COSTS. IF JUDGMENT IS FOR THE DEFENDANT, TREBLE COSTS SHALL BE ASSESSED AGAINST THE PLAINTIFF. THE DEFENDANT IN THE ACTION SHALL]"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised this statute has been on the books since Territorial days and the amendment removes two sentences dealing with suits against the National Guard. Currently, he explained, the law requires a person suing the National Guard to provide a bond and no one else has to do that. Under Patrick v. Lynden Transport, 765 P.2d 1375 (1988), the Supreme Court struck down AS 09.60.060 which required out-of-state plaintiffs suing in-state defendants to post bonds, and held it was a denial of equal protection. He opined a court would strike this language down if ever challenged. For example, he said, it could be difficult for someone injured, or an estate, to maintain any kind of suit.

REPRESENTATIVE GRUENBERG stated that secondly, within the current language the plaintiff must pay treble costs if they lose and noted this could bankrupt most service people.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 7.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 7 is adopted.

[1:25:54 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 8, 29-LS0473\S.5, Wallace, 1/20/16, which read:

Page 4, lines 6 - 7:

Delete "be relieved from amenability"

Insert "raise a defense that the person is not subject"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG explained that Amendment 8 is a grammatical amendment and also clarifies language.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 8.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 8 is adopted.

[1:26:55 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 9, 29-LS0473\S.47, Nauman/Wallace, 1/20/16, which read:

Page 5, line 1, following "is":

Insert "currently"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG pointed out that Amendment 9 makes it clear that the person serving as a judge advocate must currently be certified, as opposed to being certified years ago.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 9.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 9 is adopted.

[1:27:48 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 10, 29-LS0473\S.48, Nauman/Wallace, 1/20/16, which read:

Page 10, line 25, following "cases.":

Insert "If the officer who is authorized to convene a summary court-martial is the accuser in the matter, the court hearing the matter shall be convened by a superior competent authority, if practicable."

Page 10, line 26:

Delete "competent"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised that Amendment 10 makes the provision on summary courts-martial track the provision on special courts-martial. He explained that if a person who is the convening authority is also the accuser, it is a conflict of interest. He said it would then go to the next higher authority to conduct the court-martial; however, it may not be practical in all cases which is why "if practicable" was added.

CAPTAIN DUNBAR advised the National Guard agrees with Amendment 10.

REPRESENTATIVE GRUENBERG interjected that page 10, line 26, deletes "competent," as he believes it was a typo.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 10 is adopted.

[1:30:33 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 11, 29-LS0473\S.17, Wallace, 1/20/16, which read:

Page 16, line 29, following "delay":

Insert "as soon as possible"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised Amendment 11 requires that the documents explaining the delay be delivered to the accused as soon as possible.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 11.

REPRESENTATIVE MILLETT removed her objection and asked for a brief at ease.

[The committee treated Amendment 11 as adopted.]

[1:31:23 PM](#)

The committee took a brief at ease.

[1:33:26 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 12, 29-LS0473\S.20, Martin/Wallace, 1/20/16, which read:

Page 21, lines 26 - 27:

Delete "by confinement not to exceed 30 days or a fine of \$100, or both"

Insert "as provided in AS 09.50.020 for civil contempt"

Page 21, lines 29 - 30:

Delete "in an amount not to exceed \$100"

Insert "as provided in AS 09.50.020 for civil contempt"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG remarked that originally, if someone did not produce documents or testify under a court order the only penalty would be a violation of \$100.00. He described it as a contempt of court, and several years ago the legislature amended the contempt of court statute, AS 09.50.020, to increase the penalty. He pointed out that this amendment makes it similar to any other contempt of court, and it can be up to a misdemeanor. Under civil contempt, the person can be ordered detained, if they are subject to military law, until the order is obeyed, he explained.

REPRESENTATIVE KELLER offered his appreciation for the amendment because previously, the military fining of a civilian was a possibility and [the amendment] ties it to statute.

CAPTAIN DUNBAR advised the National Guard agrees with Amendment 12.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 12 is adopted.

[1:35:13 PM](#)

The committee took a brief at ease.

[1:35:50 PM](#)

CHAIR LEDOUX verified on the record that Amendment 11 was formally adopted.

[1:36:04 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 13, 29-LS0473\S.22, Martin/Wallace, 1/20/16, which read:

Page 24, line 16:

Delete "what further action may be appropriate"

Insert "further action that is legally permissible"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG pointed to page 24, line 16, and advised that Amendment 13 deals with, "if during the period of commitment, the accused exits the military then the convening authority must notify the person who is his custodian, the Department of Corrections, and the AG." He said that the custodian, Attorney General, must take whatever further action may be appropriate. He pointed out that the word "appropriate" is not a legal term and is a vague and standard-less delegation of authority. Normally, he said, it should say "take any action that is legally permissible."

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 13.

[1:37:23 PM](#)

[Due to technical difficulties, the committee took an at ease at 1:37 p.m. to 1:40 p.m.]

[1:40:13 PM](#)

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 13 is adopted.

[1:40:42 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 14, 29-LS0473\S.44, Nauman/Wallace, 1/20/16, which read:

Page 24, line 21, following "court":

Insert "on the record, in an open court, and in the presence of all parties to the trial"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised that the amendment deals with the announcement of the verdict. Currently, he said, it reads that the president must make the announcement to the members of the court, and the amendment makes it clear that the announcement should be to members of the court on the record, in open court, and in the presence of all parties to the trial.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 14.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 14 is adopted.

[1:42:00 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 15, 29-LS0473\S.24, Nauman/Wallace, 1/20/16, which read:

Page 24, line 26, following "trial":

Insert "before a vote is taken on the findings"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG explained that the amendment makes it clear that the military judge may change its ruling at any time during the trial before a vote is taken on the findings.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 15.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 15 is adopted.

[1:42:57 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 16, 29-LS0473\S.29, Bruce/Wallace, 1/20/16, which read:

Page 29, line 7:  
Delete "totally"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised that the amendment deals with the language on page 29, lines 4-7, stating that the period of delay resulting from an appeal is excluded in deciding an issue involving the denial of a speedy trial, unless it is determined that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. The amendment deletes "totally" as there is no such thing as totally frivolous in the law.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 16.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 16 is adopted.

[1:44:03 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 17, 29-LS0473\S.45, Martin/Wallace, 1/20/16, which read:

Page 31, lines 1 - 2:  
Delete all material and insert:  
    "(b) The commission has  
        (1) jurisdiction to hear appeals from  
courts-martial by the  
        (A) state in accordance with AS  
26.05.525; and  
        (B) accused regarding sentences,  
punishments, clearly erroneous findings, and matters  
of law; and

(2) the discretion to remand those cases to a competent court martial."

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG explained the amendment clarifies the commission's jurisdiction.

CAPTAIN DUNBAR further explained that this amendment clarifies the jurisdiction of the Military Appeals Commission, and pointed to page 31. This is to make clear the Military Appeals Commission can hear certain appeals from the state, AS 26.05.525, and also a broader category of appeals from the accused. Also, he noted, the amendment adds the ability to remand those cases after a decision. Captain Dunbar advised the National Guard helped draft this amendment, and he asked the committee to adopt it.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 17 is adopted.

[1:45:55 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 18, 29-LS0473\S.31, Nauman/Wallace, 1/20/16, which read:

Page 33, line 30:

Delete "statute"

Insert "federal or state statute or regulation"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised the provision deals with notaries and authentication, and lists categories (1) through (5), as follows:

(5) A person authorized by statute or regulation of the armed forces of the United States or the state to administer oaths or act as a notary public.

REPRESENTATIVE GRUENBERG pointed to page 33, line 23, and said the amendment makes clear who may notarize and authentic [documents]. It lists categories down to number 5, "A person authorized by state or by regulation of the armed forces of the

U.S," and his intent it to make clear that the state and regulations, if it is authorized by any state statute or regulation, or any federal statute or regulation it is allowed. For example, he advised, AS 09.63 allows post masters to administer oaths which is helpful in small communities, and also the Clerk of the House of Representatives.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 18.

REPRESENTATIVE MILLETT removed her objection.

REPRESENTATIVE KELLER objected, and then said that after reading the amendment out loud he would remove his objection.

CHAIR LEDOUX stated there being no objection, Amendment 18 is adopted.

[1:48:19 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 19, 29-LS0473\S.32, Wallace, 1/20/16, which read:

Page 35, line 18, following "commands,":  
Insert "solicits,"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG advised the amendment adds a general type of a crime, on page 35, line 17-20, which is a catchall provision. He said there is a state law crime called "solicitation" and this is not just soliciting a prostitute, it is a major crime, and has been prosecuted, when someone convinces someone to commit a crime. Under this bill, the military narrowly defines the term "solicitation." He turned to page 36, AS 26.05.582, and explained that only applies to a few types of solicitation, such as soliciting someone to desert or mutiny. He said a person subject to the code could be soliciting someone to rob or assault someone, and the amendment attempts to close a loophole by simply adding the word soliciting to the general statute.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 19.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 19 is adopted.

1:50:29 PM

REPRESENTATIVE GRUENBERG moved to adopt Amendment 20, 29-LS0473\S.38, Wallace, 1/20/16, which read:

Page 48, line 16, following "who":  
Insert "intentionally"

Page 48, line 17, following the first occurrence of  
"or":  
Insert "wilfully"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG pointed to page 48, AS 26.05.616, and he read, "A member of the militia who causes or participates in in a riot." Someone could set off a firecracker and inadvertently cause a riot, albeit not intentionally and not willfully, and this says "intentionally starts that." For example, he said, someone could get caught up in a crowd "going back and forth in a riot" and not willfully participate. The amendment adds the "mens rea" element so that it is not someone who happens to be caught up in the crowd.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 20.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 20 is adopted.

1:52:00 PM

REPRESENTATIVE GRUENBERG moved to adopt Amendment 21, 29-LS0473\S.46, Bruce/Wallace, 1/20/16, which read:

Page 48, lines 22 - 23:  
Delete "by up to six months of confinement and by  
such other punishment"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG said the amendment cures a typo, and turned to page 48, lines 22-25, the first part of the provision reads "shall be punished by up to six months confinement," and the second part, he paraphrased, "you may not impose a sentence of confinement for provoking speech and justice ... gestures." The amendment eliminates the six month confinement and makes it clear that an individual may not be confined, he said.

CAPTAIN DUNBAR advised that the National Guard agrees with Amendment 21.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 21 is adopted.

[1:53:11 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 22, 29-LS0473\S.49, Nauman/Wallace, 1/20/16, which read:

Page 56, line 16, following "officer,":  
Insert "warrant officer,"

REPRESENTATIVE MILLETT objected.

REPRESENTATIVE GRUENBERG turned to page 56, "conduct unbecoming an officer." It discusses commissioned officers, and warrant officers, for some purposes, are considered commissioned officers. He suggested that for this statute, whether a person is a W-1 through W-5, an individual should be subject to conduct unbecoming an officer regardless of the rank. The amendment adds warrant officers, W-1 through W-5 to the ranks covered by AS 26.05.633, he said.

CAPTAIN DUNBAR noted there is precedent for warrant officers being prosecuted under this provision at the federal level and the National Guard agrees with Amendment 22.

REPRESENTATIVE MILLETT referred to line 16, "conduct unbecoming a warrant officer" and questioned whether line 18 should add "warrant."

CAPTAIN DUNBAR explained that the title of the provision is not being altered, it is further defining who is an officer for the purposes of the provision. For example, he advised, a commissioned officer, warrant officer, cadet, candidate, or

midshipman are all officers for the purposes of this provision and inserting "warrant officer" is not necessary.

REPRESENTATIVE MILLETT removed her objection.

CHAIR LEDOUX stated there being no objection, Amendment 22 is adopted.

[1:56:01 PM](#)

REPRESENTATIVE KELLER advised there are areas that did not rise to the level of amendments and requested clarifications. He referred to page 1, line 10, and noted that typically criminal appeal cases go to the court of appeals and not to the Supreme Court, but are going to the Supreme Court because the court of appeals is backlogged. He asked whether that was an accurate statement.

[1:56:56 PM](#)

MS. MEADE responded that his statement was not exactly correct in that in civilian criminal law, a person starts at the superior court level with a right to appeal to the court of appeals, and then they can petition for review to the Supreme Court which has the discretion whether to accept the case for further review. She explained that this bill more or less mimics that as a party starts with the military court-martial, like the [civilian] trial level, and within this bill the person has the absolute right to appeal to the military appeals commission, which would be parallel to the civilian court of appeals. Under Section 1 of the bill they now have the right to petition the Supreme Court. She opined that it brings it in line with the procedures available in state court criminal proceedings.

REPRESENTATIVE GRUENBERG asked whether the members of the commission are subject to the Code of Judicial Conduct for disciplinary issues.

MS. MEADE stated she does not know the answer, but her instinct is that they are not, because the Code of Judicial Conduct covers judicial officers in the state and, for example, administrative law judges are not covered by the Code of Judicial Conduct to her knowledge.

REPRESENTATIVE GRUENBERG noted he may pursue this at a later time elsewhere.

MS. MEADE restated that she may wrong, but that is her belief.

1:59:00 PM

REPRESENTATIVE KELLER referred to page 7, lines 13-18, and asked for clarification of a person who commits a crime and is tried by civilian court, and it then goes to the military court and the person goes through a trial on the same issues.

CAPTAIN DUNBAR explained that "we cannot conduct a court-martial on someone who has been convicted by a civilian court," as there are clear double jeopardy issues in that case. In this case, "we might be going forward" with one kind of charge, and this individual has committed an additional offense that the civilian court is prosecuting in a "sort of" different case. For example, the National Guard is prosecuting the individual for "unbecoming," but the individual is also being prosecuted for a totally different incident for a crime against Alaska state law. In which case, he said, the National Guard may deliver this individual to the civilians to conduct that charge with potential imprisonment. The state would return the individual to the National Guard one that has been resolved, and the National Guard could still pursue a different charge, but there would not be simultaneous courts-martial to civilian courts on the same conduct or same charges.

2:00:54 PM

REPRESENTATIVE KELLER referred to page 20, lines 5-15, and asked for clarification of the section having to do with the expiration of the statute of limitations. He asked whether there could be an extension that may go on and on, with no end to the statute of limitations.

LIEUTENANT COLONEL WEAVER responded that [AS 26.05.485(e)](1) must be read with [AS 26.05.485(e)](2), because if it is a substantive crime and the specification or charge is based on the acts, then there is a double jeopardy problem. He pointed out that this particular provision applies to defective or insufficient, and used the example that if the specification is wrong by the date, or the place, but the act itself is the same, then within the military court system the idea would be to toll the statute of limitations or extend the statute of limitations because the National Guard does not want the alleged wrongdoer to get out on a technicality. However, he added, the individual still does have notice on the specific acts because the notice

on the specific acts has to be within the statute of limitations.

REPRESENTATIVE KELLER surmised that this follows the court of military justice.

2:03:10 PM

REPRESENTATIVE KELLER referred to page 26, beginning line 23, and requested clarification in that there is a 10-year limit on sentencing in the state and; therefore, the ultimate result is that the maximum penalty under this for a sexual abuse case is exactly the same as a maximum penalty for collaboration with the enemy. Whereas, he pointed out, within a federal case that could be a death penalty, and he asked whether there are any ramifications of having those two maximum penalties the same.

CAPTAIN DUNBAR replied that there have been many discussions regarding this issue, and the National Guard believes it should retain the 10-year upper limit on maximum confinement for a National Guard service member. He noted that Representative Keller is correct, that within the federal UCMJ the death penalty is available for some of these offenses and more severe crimes. He reiterated that the National Guard reviewed each provision over the summer and took crimes out, such as murder, the highest level rapes and sexual assault on a child because it does not believe it is appropriate for the National Guard to prosecute primarily civilian crimes. He pointed out that civilians have higher potential limits on sentencing.

CAPTAIN DUNBAR said that with regard to the subject provisions, they are entirely military offense, such as misbehavior before the enemy and desertion. Those are a little more complicated to answer, he said. The key is to remember that with well over 99 percent of cases of misbehavior before the enemy, such as Sgt. Bowe Bergdahl's charge, the individual will be in Title X status - active duty military and subject to the federal UCMJ. He noted that a soldier is in Title X when located in areas such as Iraq or Afghanistan. However, under the unlikely chance the enemy is in Alaska and for whatever reason the federal government had not federalized the Alaska National Guard, within that brief window a soldier or airman could commit one of these specific offenses and the Alaska National Guard would be limited to 10-years in prison. However, he stated the National Guard still feels that 10-years is an appropriate punishment in the vast majority of cases. In the cases that involve espionage, he pointed out, there are a variety of federal non-military

statutes that still apply to Alaska's soldiers and airmen even though they are not in Title X status. Furthermore, he advised there are a number of civilian charges such as someone helping the enemy to conduct an attack on the pipeline, they would be guilty of attempted murder, assault, and a variety of other Alaska state law offenses. He reiterated that the National Guard believes it is fairly well covered and understands the concerns but believes 10-years is an appropriate cap under this code.

2:07:25 PM

REPRESENTATIVE KELLER referred to page 44, [beginning line 29] and advised the provision discusses DUI civilian convictions, and deals with penalties under the military code. He asked whether there was the possibility of [double jeopardy].

CAPTAIN DUNBAR answered there are situations wherein a service member could be convicted in civilian court and still be subjected to administrative action or nonjudicial punishment; however, they cannot be court-martialed if they are convicted in civilian court due to double jeopardy. He explained that the provision was inserted at the behest of his commanders for two primary reasons, they want the ability to perform a nonjudicial punishment cleanly and have a place in their code to reference nonjudicial punishment which, he reiterated, cannot result in confinement and, also, the commanders want the ability to pursue a DUI should the civilian state court choose not to do so.

2:09:48 PM

CHAIR LEDOUX opened public testimony and after ascertaining no one wished to testify, closed public testimony.

2:11:20 PM

REPRESENTATIVE MILLETT expressed her gratitude to Chair LeDoux, the committee staff, members of the administration, Nancy Meade, Governor Bill Walker's office, Captain Dunbar, Lt. Colonel Weaver, and the committee for working hard together.

REPRESENTATIVE LYNN echoed Representative Millett's comments and thoroughly agreed. The National Guard performs a vital service and now everyone clearly knows the rules, he expressed.

REPRESENTATIVE CLAMAN echoed all committee comments and appreciates everyone's cooperation.

REPRESENTATIVE GRUENBERG agreed with the committee members and pointed out to Captain Dunbar and Lieutenant Colonel Weaver that if the bill is not as they prefer, the bill is moving to the other house.

CHAIR LEDOUX commented that the way this committee worked is the manner in which government is supposed to work. For example, the way it worked with the administration, Nancy Meade and Kaci Schroeder, republicans worked with democrats and independents, her prior staffer Thomas Brown put in a lot of work on this bill, Kalyssa and Captain Dunbar, she said.

[2:17:01 PM](#)

REPRESENTATIVE KELLER moved to report CSHB 126(MLV), Version 29-LS0473/S, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 126(JUD) moved from the House Judiciary Standing Committee.

[2:17:29 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:17 p.m.

**AMENDMENT**

**Amendment 1** [29-LS0473\S.8, Wallace, 1/20/16]

Page 35, line 24:  
Delete "shall"  
Insert "may"

Page 36, line 4:  
Delete "shall"  
Insert "may"

Page 36, line 11:  
Delete "shall"  
Insert "may"

Page 36, line 18:  
Delete "shall"  
Insert "may"

Page 36, line 21:

Delete "shall"  
Insert "may"

Page 36, line 26:  
Delete "shall"  
Insert "may"

Page 36, line 28:  
Delete "shall"  
Insert "may"

Page 37, line 6:  
Delete "shall"  
Insert "may"

Page 37, line 13:  
Delete "shall"  
Insert "may"

Page 38, line 4:  
Delete "is punishable"  
Insert "may be punished"

Page 38, line 17:  
Delete "shall"  
Insert "may"

Page 38, line 22:  
Delete "shall"  
Insert "may"

Page 38, line 29:  
Delete "shall"  
Insert "may"

Page 39, line 5:  
Delete "shall"  
Insert "may"

Page 39, line 14:  
Delete "shall"  
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Page 39, line 24:  
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Page 39, line 31:  
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Page 40, line 5:  
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Page 40, line 22:  
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Page 40, line 27:  
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Page 41, line 1:  
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Page 41, line 6:  
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Page 41, line 11:  
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Page 41, line 15:  
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Page 42, line 7:  
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Page 42, line 15:  
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Page 42, line 23:  
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Page 44, line 15:  
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Page 44, line 21:  
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Page 44, line 26:  
Delete "shall"  
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Page 44, line 31:  
Delete "shall"  
Insert "may"

Page 45, line 3:  
Delete "and"  
Insert "or"

Page 45, line 13:  
Delete "shall"

Insert "may"

Page 45, line 26:

Delete "shall"

Insert "may"

Page 47, line 2:

Delete "shall"

Insert "may"

Page 47, line 7:

Delete "shall"

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Page 47, line 20:

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Page 47, line 23:

Delete "and"

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Page 48, line 13:

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Page 48, line 17:

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Page 48, line 22:

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Page 48, line 27:

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Page 49, line 18:

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Page 51, line 18:

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Page 52, line 15:

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Page 52, line 29:  
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Page 53, line 3:  
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Page 53, line 31:  
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Page 54, line 8:  
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Page 54, line 16:  
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Page 54, line 26:  
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Page 55, line 12:  
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Page 56, line 13:  
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Page 56, line 18:  
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Page 56, line 28:  
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