

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

April 12, 2016

8:06 a.m.

MEMBERS PRESENT

Senator Bill Stoltze, Chair
Senator John Coghill, Vice Chair
Senator Charlie Huggins
Senator Lesil McGuire
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Regulatory Commission of Alaska

Rebecca Pauli - Anchorage

- CONFIRMATION ADVANCED

Alaska Board of Fisheries

Israel Payton - Wasilla

Alan Cain - Anchorage

Robert Ruffner - Soldotna

- CONFIRMATIONS ADVANCED

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126(JUD) AM

"An Act relating to the administration of military justice; relating to the adoption of regulations by the adjutant general; relating to the authority of the adjutant general; relating to appeals of convictions and sentences of court-martials; establishing the Military Appeals Commission; relating to the detention and incarceration of members of the militia; relating to the jurisdiction of the supreme court over petitions from the Military Appeals Commission; relating to involuntary commitment for evaluation or treatment of a mental disease or defect before court-martial proceedings; relating to offenses subject to

court-martial proceedings; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD AND HELD

CS FOR HOUSE BILL NO. 273(STA)

"An Act relating to the transfer of the title to a vehicle, including certain manufactured homes and trailers, on the death of the owner; allowing a person to act for the surviving spouse of a decedent to make a demand of the personal representative of the decedent's estate related to enforcing a liability against real property or an interest in real property transferred at death by a transfer on death deed; and providing for an effective date."

- BILL HEARING CANCELED

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, 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 Anchorage LIO Auditorium
09/22/15	(H)	Heard & Held
09/22/15	(H)	MINUTE(JUD)
11/17/15	(H)	JUD AT 1:30 PM Anchorage 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
01/22/16	(H)	Moved CSHB 126(JUD) Out of Committee

01/22/16 (H) MINUTE(JUD)
01/25/16 (H) JUD RPT CS(JUD) NT 7DP
01/25/16 (H) DP: CLAMAN, KELLER, MILLETT, FOSTER,
GRUENBERG, LYNN, LEDOUX
02/03/16 (H) TRANSMITTED TO (S)
02/03/16 (H) VERSION: CSHB 126(JUD) AM
02/05/16 (S) READ THE FIRST TIME - REFERRALS
02/05/16 (S) STA, JUD
04/12/16 (S) STA AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

REBECCA PAULI, Appointee
Anchorage, Alaska
POSITION STATEMENT: Testified as appointee to the Regulatory Commission of Alaska.

ALAN CAIN, Appointee
Anchorage, Alaska
POSITION STATEMENT: Testified as appointee to the Alaska Board of Fisheries.

DWIGHT KRAMER
Kenai Area Fishermen's Coalition
Kenai, Alaska
POSITION STATEMENT: Testified in support of appointees: Alan Cain, Israel Payton, and Robert Ruffner.

ISRAEL PAYTON, Appointee
Wasilla, Alaska
POSITION STATEMENT: Testified as appointee to the Alaska Board of Fisheries.

ROBERT RUFFNER, Appointee
Soldotna, Alaska
POSITION STATEMENT: Testified as appointee to the Alaska Board of Fisheries.

RICK KOCH, Manager
City of Kenai
Kenai, Alaska
POSITION STATEMENT: Testified in support of appointees: Alan Cain, Israel Payton, and Robert Ruffner.

REPRESENTATIVE GABRIELLE LEDOUX
Alaska State Legislature
Juneau, Alaska,

POSITION STATEMENT: Sponsor of HB 126.

LAURIE HUMMEL, Commissioner/Adjutant General
Department of Military & Veterans' Affairs
Alaska National Guard - Joint Base Elmendorf-Richardson
Anchorage, Alaska

POSITION STATEMENT: Presented information on HB 126.

CHRIS WEAVER, Lieutenant Colonel, Staff Judge Advocate
Alaska National Guard, Joint Base Elmendorf-Richardson
Anchorage, Alaska

POSITION STATEMENT: Presented information on HB 126.

KALYSSA MAILE, Staff
Representative Gabriella LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented information on HB 126.

KAREN MANSFIELD, Brigadier General
Alaska Air National Guard
Joint Base Elmendorf-Richardson
Anchorage, Alaska

POSITION STATEMENT: Presented information on HB 126.

LEE KNOWLES, Colonel
Alaska Army National Guard
Fort Richardson, Alaska

POSITION STATEMENT: Presented information on HB 126.

ACTION NARRATIVE

[8:06:28 AM](#)

CHAIR BILL STOLTZE called the Senate State Affairs Standing Committee meeting to order at 8:06 a.m. Present at the call to order were Senators Coghill, Huggins, and Chair Stoltze. Senator Wielechowski arrived shortly thereafter.

CONFIRMATION HEARINGS

[8:07:48 AM](#)

VICE-CHAIR COGHILL announced that the first order of business would be on the Governor's appointees to the Regulatory Commission of Alaska and the Alaska Board of Fisheries.

Regulatory Commission of Alaska

8:08:09 AM

REBECCA PAULI, Appointee, Anchorage, Alaska, testified as appointee to the Regulatory Commission of Alaska (RCA) and shared her personal history. She said she was uniquely qualified and her skills would be best put to use by serving on the RCA.

VICE-CHAIR COGHILL asked if her advocacy for rural Alaska would be an advantage or disadvantage. He inquired if she may have to recuse herself when addressing rural regulations.

MS. PAULI said since 2002 she has been an adjudicator with the state and has been removed from her rural advocacy role for quite some time. She believed that her background would not cause any problems and did not anticipate a conflict.

VICE-CHAIR COGHILL noted that Alaska's independent power-grids were challenging to the RCA. He asked what challenges she looked forward to smoothing out. He noted that the Railbelt was the state's main and most highly regulated grid.

MS. PAULI conceded that Alaska's grid structure was so different from anywhere else because it was not connected to the Lower 48. She remarked that Alaska's unique challenges affected both rural and urban utilities.

VICE-CHAIR COGHILL noted that Ms. Pauli would also have to deal with water and sewer regulation as well as pipelines. He asked if Ms. Pauli has experience in dealing with water, sewer, and pipelines.

MS. PAULI answered that she did have experience and noted her background with water utilities.

8:14:41 AM

SENATOR HUGGINS asked about pending legislation that requested exemption for power producers under 65 megawatts.

MS. PAULI replied that she did not review the legislation and was unable to respond.

VICE-CHAIR COGHILL asked if Ms. Pauli had any aspirations for working in the RCA.

MS. PAULI replied that she was a lifelong resident and had a vested interest in seeing the state continue to flourish. She

asserted that her only aspiration was to do the best job that she can and protect the public interest which requires a balancing of many different factors.

Alaska Board of Fisheries

VICE-CHAIR COGHILL announced the hearing for appointments to the Alaska Board of Fisheries.

[8:17:58 AM](#)

ALAN CAIN, Appointee, Anchorage, Alaska, shared his extensive background in fisheries management and enforcement. He stated that his goal was to help sustain Alaska's precious fishery resources for generations to come.

[8:19:35 AM](#)

SENATOR HUGGINS asked about the challenge in Cook Inlet regarding numbers of escaping Chinook salmon. He inquired how the Chinook numbers could be enhanced in the Cook Inlet.

MR. CAIN explained that the Board of Fisheries takes allocation requests from all of the various user groups into account and tries to implement the best possible tools to distribute fish. He said managing the Cook Inlet fishery was an ongoing effort and a tremendous challenge.

[8:22:19 AM](#)

SENATOR HUGGINS asked that Mr. Cain address a DNA testing study that identifies where salmon spawn and where they are caught.

MR. CAIN replied that the studies that determine the travel routes for specific fish species was extremely valuable for formulating commercial and other user-group openings and closures. He opined that DNA analysis was very important and should be funded.

SENATOR HUGGINS asked that Mr. Cain address escape-corridors that allowed an enhanced number of fish to travel to destinations in the Cook Inlet.

MR. CAIN explained that escape-corridors was one of the tools utilized to fairly distribute fish. He conceded that the escape-corridor tool was not ideal and noted polarized opinions.

VICE-CHAIR COGHILL opened public testimony to address Mr. Cain's appointment.

[8:25:40 AM](#)

DWIGHT KRAMER, Kenai Area Fishermen's Coalition, Kenai, Alaska, testified in support of Mr. Cain's, Mr. Payton's, and Mr. Ruffner's appointments to the Alaska Board of Fisheries.

[8:27:36 AM](#)

ISRAEL PAYTON, Appointee, Wasilla, Alaska, detailed that he was raised in rural Alaska and lived a substance way of life. He revealed that he lived in Wasilla and worked for Airframes Alaska, the state's largest air-parts manufacturer that was located in Chugiak. He revealed that he was a member of the Mat-Su Fish and Game Advisory Committee in addition to being involved with many other fish and game meetings. He set forth that he wanted to be a board member because of his involvement in fish activities for his entire life.

CHAIR STOLTZE asked that Mr. Payton address the Cook Inlet's corridors.

MR. PAYTON conceded that the Cook Inlet's conservation corridor was a contentious and divisive issue. He admitted that fish runs were cyclical and he did not know the corridor's impact on the fish runs. He noted that the Upper Cook Inlet Management Area addressed the corridor every three years and anticipated proposals for changes. He remarked that Mat-Su stock was starting to slowly climb out of a slump.

[8:36:19 AM](#)

SENATOR HUGGINS revealed that Mr. Payton was his neighbor and thanked him for his willingness to serve. He spoke of the challenges in roadway streams that have been closed for multiple years. He asked for Mr. Payton to address the correlation between allowing fish into fresh-water streams and its impact on commercial fishing.

MR. PAYTON discussed escapement goals and their results. He noted the importance of conservation and tools to aid in it. He pointed out that reduced Chinook numbers were prevalent throughout the state.

CHAIR STOLTZE noted that the Upper Cook Inlet Management Area Plan states that the burden of conservation be shared amongst all user groups in close proportion to their respective harvest when there is a stock of concern. He asked whether the Department of Fish and Game was enforcing management plans in Upper Cook Inlet.

MR. PAYTON noted frustrations with various issues related to management plans. He said the department was doing a pretty good job, but the board and the department needed to work more closely together. He set forth that the key was to work with the managers to see what works. He remarked that the many variables made the job tough. He set forth that everyone should share the burden of conservation.

[8:43:24 AM](#)

ROBERT RUFFNER, Appointee, Soldotna, Alaska, detailed that his personal background and experience entailed numerical modeling and understanding statistics. He stated that he has a good understanding of the statutorial-allocation criteria and would apply them to the best of his ability when making decisions on fisheries across the entire state. He added that he would draw from the Sustainable Salmon Policy to address sharing the conservation burden among all users in proportion to their harvest.

[8:47:44 AM](#)

CHAIR STOLTZE noted that Mr. Ruffner referenced the "shared burden" and noted that the Department of Fish and Game already made decisions on restricting river access for Chinook salmon. He asked what the next conservation measures would be to protect the Chinook salmon run.

MR. RUFFNER remarked that he was not afraid to shutdown fisheries when there were conservation concerns and added that he was also not afraid to further restrict anybody when addressing fisheries. He asserted that board members have a responsibility to understanding the weaker stocks. He admitted that he was concerned with the greater likelihood for erring more on the side of being conservative with fisheries due to the reduction in the Department of Fish and Game's budget.

CHAIR STOLTZE noted Mr. Ruffner's letter that voiced concern about weak-stock management. He remarked that the Endangered Species Act (ESA), an option of last resort, may be considered if the Department of Fish and Game did not pay more attention on the weaker stocks.

MR. RUFFNER replied that he did not see that the state has reached a level that would trigger an ESA action. He voiced that he was concerned about fish vanishing in a Kenai stream that was nearby to where he lived. He admitted that seeing the fish disappear in the stream near to him was one of the reasons why he wanted to be involved with the board.

CHAIR STOLTZE noted the he and Mr. Ruffner were in agreement about the ESA option.

[8:52:37 AM](#)

MR. RUFFNER commented on federal overreach and said the state needs to take appropriate actions.

SENATOR HUGGINS addressed low-escapement goals in the Mat-Su and asked Mr. Ruffner to comment.

MR. RUFFNER replied that escapement goals were decreasing due to new information from the Department of Fish and Game. He said addressing the causes to lowered escapement goals was important.

[8:55:08 AM](#)

SENATOR HUGGINS noted that Chinook fishing on the Kenai River has been severely limited and asked what should be done.

MR. RUFFNER admitted that in-river fisheries for Chinook has been extremely cut back to help the stock and noted the use of set-nets which catch a fair amount of Kenai-bound Chinook. He pointed out that third-year tables have indicated an up-tick in upcoming Kenai-Chinook runs. He suggested that the fishery be careful in not reacting too quickly by turning the fishing back on until bigger returns were realized.

SENATOR HUGGINS asked how many Chinook were caught by net-setting.

MR. RUFFNER approximated that half of the Kenai-Chinook harvest was taken by net-setting. He suggested that the allocation criteria should frame future discussions.

[8:58:41 AM](#)

CHAIR STOLTZE asked how many "eastside" set-netter permits were active.

MR. RUFFNER replied that there were several hundred.

CHAIR STOLTZE asked Mr. Ruffner to confirm that some percentage was not active, but the active net-setters take half of the fish.

MR. RUFFNER answered correct.

RICK KOCH, Manager, City of Kenai, Kenai, Alaska, testified in support of Mr. Ruffner, Mr. Cain, and Mr. Peyton.

CHAIR STOLTZE welcomed Senator McGuire to the committee meeting.

He closed public testimony. He noted that he opposed Mr. Ruffner last time due to an imbalance on the board, but declared that he would vote for all of the appointees.

MR. RUFFNER stated that he appreciated the differences in the designees that were appointed.

[9:05:37 AM](#)

SENATOR WIELECHOWSKI commented that he would vote for all three designees. He opined that board members were given proxies to represent all perspectives. He pointed out that commercial fisheries get 98 percent of all of the fish in Alaska. He hoped that board members remember the large population in Southcentral who want to have access to the fish.

[9:07:10 AM](#)

SENATOR MCGUIRE announced that she supported Mr. Payton's appointment.

[9:08:23 AM](#)

At ease.

HB 126-CODE OF MILITARY JUSTICE; APPEALS

[9:14:22 AM](#)

CHAIR STOLTZE announced the consideration of HB 126.

[9:14:55 AM](#)

REPRESENTATIVE GABRIELLE LEDOUX, Alaska State Legislature, Juneau, Alaska, sponsor of HB 126, related that HB 126 was a major change in the Alaska Military Code of Justice (AMCJ). She noted that the AMCJ had not been changed since 1955. She summarized that bill creates a state code of military justice that was similar to the federal code. She explained that the AMCJ applies to the militia, the Alaska National Guard, and the Alaska State Defense Force.

She specified that the bill was a disciplinary tool and noted two types of punishments as follows:

1. Non-judicial for less serious offenses in which there are no jail time and no separation from the military.
2. Court-martial for breaking military criminal law that include jail and separating from the Guard penalties.

REPRESENTATIVE LEDOUX detailed that crimes noted in the AMCJ included strictly military as well as those with civilian equivalencies. She noted that militia may prosecute civilian-type crimes only if the civilian prosecutors decline to prosecute. She continued that the AMCJ covered court-martial rules, procedures, and an appeals process. She set forth that the bill empowers the Alaska National Guard to address bad actions and sever bad actors from service. She set forth that the bill avoids cumbersome state termination procedures, lets Alaska National Guard members and the public know the expectations and the consequences were clear.

[9:17:41 AM](#)

She detailed that the latest iteration of the bi-partisan bill included involvement from Representative Tuck, Senator Wielechowski, and the Alaska National Guard.

CHAIR STOLTZE noted that the committee had experienced a lack of engagement by the attorney general's office, the Department of Law, and the administration regarding the bill.

REPRESENTATIVE LEDOUX replied that her office worked extensively with attorneys from both Legislative Legal and the Alaska National Guard.

[9:23:01 AM](#)

LAURIE HUMMEL, Commissioner, Department of Military & Veterans' Affairs (DMVA), and Adjutant General of the Alaska National Guard, Anchorage, Alaska, said HB 126 was the most critical remaining step with improving personnel and operational readiness in the Alaska National Guard. She set forth that without a workable ACMJ, the Alaska National Guard would continue to struggle with the issues brought to light several years ago.

She disclosed that in response to the culture that grew in the Alaska National Guard prior to her appointment, she set four goals as follows:

1. Foster professionalism and ethical fitness.

2. Create preventative measures and offer comprehensive training to mitigate improper behavior, especially in regards to sexual harassment or violence.
3. Help victims of improper behavior.
4. Bring offenders to justice.

COMMISSIONER HUMMEL set forth that the Alaska National Guard was on target with the first three goals, but the fourth goal would never be attained without an updated ACMJ.

She summarized that HB 126 was a critical step forward toward building and maintaining the public's trust and confidence.

9:25:52 AM

SENATOR HUGGINS emphasized that the Alaska National Guard is not lawless. He set forth that the chain of command and leadership is what makes good units. He read the following:

Military discipline is not achieved exclusively or primarily through use of or threat of the military criminal law process, the court-martial. Commanders use the combination of tools to maintain discipline including leadership by example, training, corrective measures, and administrative actions authorized by applicable regulations.

He remarked that whether military or other organizations, leadership by example, high standards of performance, and taking immediate action results in not having to use court-martials or non-judicial punishments.

COMMISSIONER HUMMEL agreed that discipline is determined by ethical leadership through the use of role modeling and applying the same set of standards for everyone. She addressed the lack of administrative procedures and a "toothless" ACMJ that impacted the Alaska National Guard in the past.

SENATOR HUGGINS agreed that the bill would provide another tool, but conceded that the symptoms of the people being dealt with does not go away just because of the tool. He set forth that the intent is not to have conduct that has to be dealt with.

9:30:32 AM

SENATOR WIELECHOWSKI pointed out that the National Guard Bureau's Office of Complex Investigations (OCI) did a comprehensive investigation and issued a 229-page report stemming from a 6-month long investigation on the Alaska

National Guard. He disclosed that OCI determined that the following occurred:

Actual and perceived favoritism, ethical misconduct, and that the Alaska National Guard is not properly administering justice.

SENATOR WIELECHOWSKI noted that Alaska's former governor said:

This culture of mistrust and failed leadership in the Guard ends now.

He asked if there were any recommendations by organizations that Alaska pass a uniform code of military justice.

COMMISSIONER HUMMEL answered yes. She specified that OCI recommended that a practicable code of military justice be developed.

[9:34:14 AM](#)

CHRIS WEAVER, Lieutenant Colonel (LTC), Staff Judge Advocate, Alaska National Guard, Joint Base Elmendorf-Richardson, Anchorage, Alaska, shared his military background, noted that he became a judge advocate in 2003, served as chief of military justice in Kosovo, became a defense attorney as well as deputy general counsel for the California National Guard, and recently asked by General Hummel to be Staff Judge Advocate for the Alaska National Guard. He said he believed in General Hummel and asserted that she was the right leader for the Alaska National Guard. He asserted that the nature of the job was towards his strengths in building processes, working with people and future leaders so that the processes stay in place and are implemented correctly.

[9:38:33 AM](#)

CHAIR STOLTZE asked what were his strengths and weaknesses in being from the outside.

LTC. WEAVER replied that his weakness was that he was still learning about Alaska, but his strengths included having a broad experience as a defense attorney and prosecutor as well as being given the latitude in Alaska to build a broad experience base to assist with the bill.

[9:40:23 AM](#)

He proceeded with a presentation on the ACMJ and reviewed the events which led up to the HB 126. He noted that the OCI issued

a report in 2014. He pointed out that there was no record of an ACMJ court-martial since the current code's inception in 1955. He added that he has found no non-judicial punishment in the Alaska National Guard. He revealed that most discipline has been administratively done.

9:42:03 AM

SENATOR HUGGINS asked if there was an authority to do court-martials in the Alaska National Guard.

LTC. WEAVER replied that the current code was not very thorough and no one has been able to figure out exactly what is a crime. He detailed that HB 126 would result in an ACMJ that was more specific.

SENATOR HUGGINS stated that he supported the essence of HB 126. He surmised that the authority for non-judicial punishment was probably well delineated in the ACMJ.

LTC. WEAVER pointed out that he has no record of a non-judicial punishment every being done. He said he did not know the reasons for no non-judicial punishments. He set forth that the new ACMJ will be more specific and bring a process to the Alaska National Guard.

SENATOR HUGGINS noted that some Alaska National Guard members under disciplinary measures where one person received an honorable discharge and others were recommended for promotion. He reiterated that passing the bill does not make the problem go away and stressed that leadership and understanding the standards was vital.

9:46:33 AM

LTC. WEAVER concurred with Senator Huggins. He continued with his presentation and detailed that regulations would be implemented by July 2016 if HB 126 passes.

He revealed that George Washington said, "Discipline is the soul of an army." He agreed with Senator Huggins that leadership was key along with ability to discipline soldiers that do act inappropriately. He noted that the Alaska Criminal Code would have the right of first refusal on crimes that are also civilian. He remarked that the ACMJ was an ongoing process.

SENATOR HUGGINS noted that he was concerned with the timeline in establishing the Military Appeals Commission due to the confirmation process. He remarked that court-martialing people

prior to instituting the Military Appeals Commission was probably not wanted.

[9:49:16 AM](#)

CHAIR STOLTZE voiced concern about the appointment process and the Legislature's lack of involvement.

LTC. WEAVER deferred to Representative LeDoux to address the appointment process. He explained that the ACMJ was military in nature and surmised that the language in the bill was based on the appointment process to the appeals courts on the federal side.

He addressed "Concurrent Offenses" and explained that the offenses were similar to the civilian crimes. He specified that civilians have the right of first refusal. He said the National Guard does not want to prosecute cases that are civilian in nature because that was the civilian court's job. He detailed that the National Guard will not prosecute if the civilian court prosecutes in order to avoid double-jeopardy issues.

SENATOR HUGGINS asked what would occur if an offense happens off of the compound.

[9:52:32 AM](#)

LTC. WEAVER explained that jurisdiction would depend on whether an individual was "on orders;" however, a civilian court has the right of first refusal for civilian crimes.

CHAIR STOLTZE asked if double-jeopardy would include any civil rights actions by the US Justice Department.

LTC. WEAVER answered yes, if the action was a crime.

CHAIR STOLTZE asked if the federal government would be allowed to pursue.

LTC. WEAVER answered yes, if the action was a federal crime.

He reviewed the "ACMJ Basics" and noted that offenses would be adjudicated through court-martials or non-judicial punishment (NJP) for minor offenses.

[9:54:50 AM](#)

He addressed the "State Militia" and specified that the bill applied to individuals under "active duty" status for: Alaska

National Guard, Alaska Naval Militia, and the Alaska State Defense Force.

LTC. WEAVER examined the "National Guard Duty Status" and specified that the ACMJ applied to "State Active Duty" and "Title 32" statuses.

CHAIR STOLTZE readdressed double-jeopardy and inquired if a civilian court's adjudication be used on the non-judicial proceedings.

LTC. WEAVER answered yes. He specified that non-judicial does not play a part in double-jeopardy.

CHAIR STOLTZE asked if a non-judicial action could be viewed as a personnel action.

LTC. WEAVER answered yes.

[9:57:23 AM](#)

SENATOR HUGGINS asked what actions would occur to an Alaska National Guard member who gets in trouble "downtown" when not on active duty.

LTC. WEAVER specified that a civilian-like crime not enumerated in HB 126 would depend on whether the civilian court decides to take the case. He said if a drilling-guard member's crime was enumerated in the ACMJ under HB 126, then the National Guard would have jurisdiction and the individual would be subject to non-judicial punishment.

SENATOR HUGGINS asked what would occur if an Alaska National Guard member declined non-judicial punishment.

LTC. WEAVER specified that the idea would be for a "no turndown" non-judicial punishment system. He explained that the reason for a "no turndown" was due to soldiers escaping justice by asking for a court-martial with the knowledge that the case would unlikely proceed because the process was resource intensive. He noted that the appeal process was available as well.

[10:00:42 AM](#)

SENATOR HUGGINS asked if the Alaska National Guard's non-judicial/Article 15 system were both "Company Grade" and "Field Grade."

LTC. WEAVER replied that "General Officer" would be included too.

SENATOR MCGUIRE asked that Mr. Weaver address the "no turndown" or "not to decline" system and its impact on morale and conduct.

10:02:52 AM

LTC. WEAVER explained that justice would be swift and leadership would ensure that discipline was being dealt with correctly.

SENATOR MCGUIRE asked how sexual assault, intimidation and harassment were being addressed.

10:06:12 AM

LTC. WEAVER explained that HB 126 has taken the language from the Department of Defense on sexual assault. He specified that sexual assault was a military crime that effects the unit, its morale and its ability to perform a mission. He pointed out that sexual assault also applied to male victims. He revealed that soldiers, airmen, Judge Advocate General's Corps (JAG), and judges were trained on sexual assault and sexual harassment. He reiterated that the Alaska National Guard would look at a case if the civilian-side declines a sexual assault case.

SENATOR MCGUIRE concurred that sexual assault also affects men, entire units and families. She asserted that sexual assault was a crime of power and not of sex. She set forth that dealing with an over-arching threat on a regular basis of intimidation, harassment, and sexual assault was overwhelming for a person that was trying to defend their country or state. She said the ability to provide preventative training was important as well as responding swiftly so that everyone in the unit sees that the conduct would not be allowed.

10:09:51 AM

LTC. WEAVER addressed what behavior can be punished under the ACMJ: military offenses, and offenses chargeable in both military and civilian court. He added that "Article 134" or "Section 634" in ACMJ addressed conduct that is "counter to good order and discipline" or "brings discredit upon service" as well.

He explained that "24/7 Jurisdiction" applied to:

- Active Guard Reserve (AGR) on orders "24/7."
- Man Day (M-day) does apply to military offenses.
- Alaska State Defense Force.

- State Active Duty, applies to any Alaska National Guard member.
- No jurisdiction for "Title 10."

LTC. WEAVER reviewed where jurisdiction attaches as follows:

- Anywhere in the State of Alaska.
- Outside the state and on orders, "official military travel."
- Not outside the state and not on orders, "personal travel."

He addressed Non-judicial Punishment (NJP) and explained that NJP was used for minor offenses. He reiterated that serious offenses would go to court-martial.

He detailed that there were three levels of court-martial:

1. Summary: lower level.
2. Special: a little bit higher than "Summary."
3. General: highest level of court-martial.

He reviewed the levels of maximum punishments and noted the variables that affect punishment.

[10:12:26 AM](#)

SENATOR HUGGINS pointed out that the jurisdiction on The State Dense Force members may impact individuals who may not be aware of its consequences.

LTC. WEAVER reviewed the details on the "No Turn-Down" as follows:

- When presented with NJP, service-members do not have the right to demand trial by court-martial.
- Court-martials are very resource intensive.
- Confinement cannot be ordered under non-judicial punishment.

He provided an overview of non-military and military offenses with maximum punishments allowable under HB 126.

[10:14:51 AM](#)

CHAIR STOLTZE asked if SB 91, the omnibus crime bill, would change the penalties in HB 126.

LTC. WEAVER conceded that he has not followed SB 91 through the Legislature.

[10:16:07 AM](#)

KALYSSA MAILE, Staff, Representative LeDoux, Alaska State Legislature, Juneau, Alaska, revealed that Legislative Legal determined that SB 91 should not affect HB 126.

CHAIR STOLTZE asked if there were any penalties of which the death penalty could be applied.

LTC. WEAVER answered no. He specified that penalties were limited to: confinement, discharge, and forfeitures through fines.

SENATOR HUGGINS stated that "absent without leave" (AWOL), was a symptom of rising problems in units. He asked if Mr. Weaver knew the Alaska National Guard's AWOL statistics.

LTC. WEAVER answered that he did not know.

SENATOR HUGGINS asked what happens to an Alaska National Guard member that deserts.

LTC. WEAVER replied that he has dealt with the issue and addressing desertion takes a multi-pronged approach depending on the AWOL level. He provided examples and asserted that there are consequences if a person does not meet their obligations.

[10:20:20 AM](#)

SENATOR HUGGINS asked if the Alaska National Guard uses "flagging" where a person cannot move or be promoted after a receiving an Article 15 for being AWOL.

LTC. WEAVER replied that the Army does have "flagging," but the Title 10 Air Force and the Air National Guard does not. He explained that "flags" occur prior to the disposition of the punishment and the "flagging" comes off after the punishment is received.

[10:22:30 AM](#)

CHAIR STOLTZE asked what happens if an Alaska National Guard member fails to show up for their adjudication hearing. He noted that not showing up for court proceedings was a common offense in the civilian-criminal system and adjustments have been made on sanctions.

LTC. WEAVER answered that a person would be separated from the National Guard with the possibility of facing an additional court-martial.

He summarized military crimes and noted that conduct unbecoming an officer only applied to officers. He added that the General Article offense encompassed the element of a wrongful act and or an additional element that is prejudicial to good order and discipline, or conduct of a nature to bring discredit on the militia.

[10:25:38 AM](#)

SENATOR WIELECHOWSKI asked if the punishments listed in the ACMJ were patterned after the federal Uniform Code of Military Justice (UCMJ).

LTC. WEAVER explained that some punishments were mirrored after the federal UCMJ and some were policy calls made by the House.

SENATOR HUGGINS suggested that a process be instituted whereby someone outside the Alaska National Guard reviews the bill.

[10:28:59 AM](#)

MS. MAILE noted Senator Wielechowski's questions on offenses and detailed that no new offenses were created in the bill. She specified that some minor changes were made, but no new crimes were created.

SENATOR MCGUIRE asked if there will be an expert review of the bill.

[10:31:33 AM](#)

CHAIR STOLTZE replied that his office would work with Representative LeDoux on finding a person with a critical and insightful eye and not an "echo."

SENATOR MCGUIRE reiterated that the bill was a problem in search of a solution. She continued as follows:

Either the victims don't benefit or the accused does not benefit. Either way you look at it if you put something in place that is subject to constitutional challenge or legal challenge, or is unfair or unequitable as you look at other laws making their way through, that would not be good.

[10:33:16 AM](#)

KAREN MANSFIELD, Brigadier General, Air National Guard, Joint Base Elmendorf-Richardson, Anchorage, Alaska, commented on the ACMJ as follows:

In the military, the intent of the disciplinary action is not to remove people from the ranks, but to affect reform and to keep them productive. Reform requires immediate, measurable, visible corrective action. HB 126, the Alaska Code of Military Justice (ACMJ) will give commanders the tools to encourage team members to behave appropriately, which promotes good order and discipline, and builds trust and respect in the corps. Without the ACMJ, our existing tools: reprimand, rank reduction, and administrative discharge are just that, administrative. The paperwork processes for discipline are not timely, they lack impact, and can be invisible to the other members of the organization.

With the ACMJ the command gains the ability to affect prompt corrective actions with a two-fold benefit. First, we may change behavior at the onset when problems are smaller and correctable. Second, corrective actions are visible and reflect accountability to all other members of the organization. We owe our soldiers and airmen that accountability is a key component in a legal, ethical, moral, and a transparent Alaska National Guard they deserve.

[10:35:49 AM](#)

LEE KNOWLES, Colonel, Alaska Army National Guard, Fort Richardson, Alaska, stressed the importance of having a military code of justice and listed qualities discipline should have. He said the ACMJ is about empowering leaders.

[10:38:03 AM](#)

MS. MAILE presented a sectional review as follows:

Section 1 of the bill gives the Supreme Court the ability to review decisions made by the Military Appeals Commission.

Section 2 amends the suits against officers and enlisted persons under AS 26.05.140 to note that the provision does not apply to an action or proceeding under the Code of Military Justice.

Section 3 is a conforming change.

Section 4 is the "meat" of this bill, it's where the Code of Military Justice is being augmented or created.

MS. MAILE summarized that the majority of the bill's sections provide for procedures initializing a court-martial and reviewed the three levels of court-martials and their penalties.

She pointed out that the addition of a grand jury requirement was unique to Alaska's code and was not in early versions of the bill. She set forth that the grand jury requirement was put into the bill to reflect Alaska's heightened constitutional requirements.

She continued her sectional as follows:

Section 5 of the bill amends AS 33.30.011 to include "Held under the authority of state law."

Section 6 requires persons confined under the Code can be committed to the custody of the Department of Corrections as directed by the adjutant general. In this bill there is the ability for a person to be confined in a military or civilian prison. We don't have a military prison here, so the expectation is that they would become part of the Department of Corrections system.

Section 7 requires the attorney general to assist the military court in obtaining the commitment of a person accused under AS 26.05 for a competency examination.

Section 8 makes conforming changes.

Section 9 repeals those existing parts of the Code of Justice which we previously heard have been underutilized and very difficult to use.

Section 10 provides the bill applies to offenses occurring on or after the effective date of the act. You see in Section 12 the effective date is July 2016.

Section 11 provides the staggered terms for the Military Appeals Commission. This is uncodified law

and just makes it so that not everybody's term on the Military Appeals Commission comes up at the same time.

10:43:29 AM

MS. MAILE addressed crimes, penalties, and the statute of limitations in the ACMJ as follows:

In early iterations of this bill, the crimes and the penalties were not included in statute, it was the original intention that these would be created through regulation; however, because this bill is essentially creating a judicial system for a group of people, we felt that it was important to articulate these in statutes so that any changes that were desired would have to come through the State Legislature and be thoroughly vetted.

The statute of limitations, we clarified to say that the imposition of non-judicial punishment is limited to within two years of the offense and the non-judicial punishment is limited to three years within that.

She reiterated that the crimes and penalties were now in statute and highlighted the change as the fundamental change that has come through the bill's iterations.

She noted that the House Judiciary Committee had a number of amendments, but many were minor word changes.

CHAIR STOLTZE announced that HB 126 would be held in committee.

10:46:31 AM

There being no further business to come before the committee, Senator Stoltze adjourned the Senate State Affairs Committee at 10:46 a.m.