

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

January 30, 2018

1:36 p.m.

MEMBERS PRESENT

Representative Chris Tuck, Chair
Representative Justin Parish
Representative Ivy Spohnholz
Representative George Rauscher
Representative Lora Reinbold
Representative Dan Saddler

MEMBERS ABSENT

Representative Gabrielle LeDoux, Vice Chair

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 17

Encouraging the United States Congress to pass legislation giving full military burial rights to Hmong veterans of the Vietnam War.

- MOVED CSHJR 17 (MLV) OUT OF COMMITTEE

HOUSE BILL NO. 307

"An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by a member of the organized militia; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 17

SHORT TITLE: HMONG VETERANS MILITARY BURIAL RIGHTS

SPONSOR(S): REPRESENTATIVE(S) TARR

03/29/17	(H)	READ THE FIRST TIME - REFERRALS
03/29/17	(H)	MLV
01/25/18	(H)	MLV AT 1:30 PM GRUENBERG 120

01/25/18 (H) Heard & Held
01/25/18 (H) MINUTE (MLV)
01/30/18 (H) MLV AT 1:30 PM GRUENBERG 120

BILL: HB 307

SHORT TITLE: MILITARY JUSTICE & MILITIA CIVIL RELIEF
SPONSOR(S): REPRESENTATIVE(S) TUCK

01/24/18 (H) READ THE FIRST TIME - REFERRALS
01/24/18 (H) MLV, JUD
01/30/18 (H) MLV AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

MAGDALENA OLIVEROS, Staff
Representative Geran Tarr
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered question during the hearing on HJR 17 on behalf of Representative Tarr, prime sponsor.

BOB DOEHL, Deputy Commissioner
Office of the Commissioner/Adjutant General
Department of Military & Veterans' Affairs (DMVA)
Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: Gave opening remarks during the hearing on HB 307.

LIEUTENANT COLONEL CHRISTOPHER WEAVER, Judge Advocate
Alaska National Guard Joint Staff
Department of Military & Veterans' Affairs (DMVA)
Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: Reviewed the provisions under HB 307.

ACTION NARRATIVE

[1:36:17 PM](#)

CHAIR CHRIS TUCK called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:21 p.m. Representatives Saddler, Parish, Spohnholz, Reinbold, and Tuck were present at the call to order. Representative Rauscher arrived as the meeting was in progress.

HJR 17-HMONG VETERANS MILITARY BURIAL RIGHTS

[1:37:18 PM](#)

CHAIR TUCK announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 17, Encouraging the United States Congress to pass legislation giving full military burial rights to Hmong veterans of the Vietnam War.

CHAIR TUCK, after ascertaining that no one wished to testify, closed public testimony on HJR 17 [which had been opened on 1/25/18]. In response to a question from Representative Reinbold, he confirmed that testimony heard at the previous hearing on HJR 17 was in the committee packet.

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REPRESENTATIVE SADDLER inquired as to when Congress would be deciding on this issue.

MAGDALENA OLIVEROS, Staff, Representative Geran Tarr, Alaska State Legislature, on behalf of Representative Tarr, prime sponsor, stated that S1179, the Hmong Veteran Service Recognition Act, is a resolution introduced in Congress in May 2017 by Senator Lisa Murkowski, and she offered her understanding that Representative Dan Sullivan supported the Act. She said HJR 17 would serve as a show of support from Senator Murkowski's state legislature. Ms. Oliveros pointed out that this is not the first time Senator Murkowski has introduced this topic, but S1179 is the current version in Congress.

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REPRESENTATIVE RAUSCHER moved to adopt Amendment 1 to HJR 17, labeled 30-LS0723\D.1, Bannister, 1/23/18, which read as follows:

Page 2, line 24, following "veterans;":

Insert "and

WHEREAS Senator Lisa Murkowski has introduced in the United States Senate a bill relating to the burial of Hmong veterans;"

REPRESENTATIVE SADDLER objected for the purpose of discussion.

REPRESENTATIVE RAUSCHER stated that Amendment 1 would add language to HJR 17 to explain that Senator Murkowski introduced [the Hmong Veteran Service Recognition Act]. He said, "I just

thought that it might fit well with what we're trying to do there, since it was our Senator that moved it."

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REPRESENTATIVE SADDLER removed his objection. There being no further objection, Amendment 1 was adopted.

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REPRESENTATIVE SADDLER moved to report HJR 17, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

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The committee took an at-ease from 1:41 p.m. to 1:42 p.m.

[1:42:20 PM](#)

REPRESENTATIVE SADDLER withdrew his previous motion.

REPRESENTATIVE SADDLER restated the motion to report HJR 17, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHJR 17(MLV) was reported out of the House Special Committee on Military and Veterans' Affairs.

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The committee took an at-ease from 1:43 p.m. to 1:45 p.m.

HB 307-MILITARY JUSTICE & MILITIA CIVIL RELIEF

[1:45:41 PM](#)

CHAIR TUCK announced that the final order of business would be HOUSE BILL NO. 307, "An Act requiring a person who commits certain offenses under the code of military justice to register as a sex offender or child kidnapper; relating to the Servicemembers Civil Relief Act; relating to contracts made by a member of the organized militia; relating to nonjudicial punishment of members of the organized militia; relating to offenses subject to court-martial proceedings; and providing for an effective date."

CHAIR TUCK, as prime sponsor of HB 307, paraphrased the sponsor statement, which read as follows [original punctuation provided]:

In an effort to continue to modernize and update the Alaska Military Code, House Bill 307 provides statutory changes to incorporate recent updates from the Federal Uniform Code of Military Justice (UCMJ) and Servicemembers Civil Relief Act (SCRA).

In 2016, Alaska's military command worked with the legislature to pass the Alaska Code of Military Justice (ACMJ) to provide greater ability to pursue and prosecute those servicemembers who violate military rules and protocols. House Bill 307 is a continuation of those efforts.

House Bill 307 would update crimes recognized by the UCMJ, establish a procedure within the code of military justice for a service member who commits a sexual offense to register as a sex offender or child kidnapper, update offenses that are subject to court-martial proceedings and update consumer protections for service members.

In close and continuing consultation with the Department of Military and Veterans Affairs, we are continuing our efforts to guaranteeing the safety of Alaskans and the security of our law-enforcement procedures.

Updating the ACMJ regularly is a critical response to the always-evolving military justice system, and vital to maintaining good order and discipline in the Alaska Organized Militia, so it is timely and necessary that we pass HB 307. I urge your support of this legislation.

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BOB DOEHL, Deputy Commissioner, Office of the Commissioner/Adjutant General, Department of Military & Veterans' Affairs (DMVA), stated that DMVA welcomes and supports HB 307, which builds on the bi-partisan efforts led by Representative LeDoux a couple years ago in House Bill 26, which provided a viable Alaska Code of Military Justice. Deputy Commissioner Doehl said he considers HB 307 "ongoing maintenance

and tweaks to that, rather than a huge overhaul." He said HB 307 "keeps us in sync with the good ideas that have come out on the federal side." He continued:

We believe the provisions that prohibit sexual relationships between military personnel in the same chain of command ... and situations of special trust is consistent with ... civilian criminal law for similar situations, such as prisoner and corrections officer, teacher and student, where consent is problematic. We welcome ... the opportunity for a service member convicted of ... a sexual assault under the ACMJ to also have to register at the sex offender registry that we think fills an important gap, in terms of ... avoiding a predator situation. We also believe that the provision preventing military personnel from rejecting non-judicial punishment [is] akin to a parking ticket and favor of pursuing a court martial to settle minor disciplinary matters as a necessary step forward.

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LIEUTENANT COLONEL CHRISTOPHER WEAVER, Judge Advocate, Alaska National Guard Joint Staff, Department of Military & Veterans' Affairs (DMVA), stated that under HB 307, a service member convicted under the Alaska Military Code of Justice (ACMJ) would have to register just as a civilian convicted for a similar crime would have to do. The proposed legislation would allow a service member "to deploy within the state for civil emergencies" and would give specificity to current provisions on the rights of service members who are deployed. He indicated that the bill addresses liabilities to military members that may have issues related to phone contracts, cable, or rent, but cannot address these issues because of deployment within the state. He said HB 307 would remove the "no turndown provision of the nonjudicial punishment, currently the ... ACMJ." He explained, "This means that a service member accused of minor offenses ... that don't rise to a court martial level cannot choose an expensive court martial instead of repeating the nonjudicial punishment." Lieutenant Colonel Weaver reminded the committee that nonjudicial punishment involves a commander's inherent authority to discipline.

LIEUTENANT COLONEL WEAVER said HB 307 would also update the current ACMJ with substantive offenses recently adopted by Congress for the federal ACMJ. He said any of the offenses

listed affect reoccurring issues within the military worldwide. For example, retaliation is a major concern, and Congress has made retaliation an offense within the federal ACMJ. He said the retaliation provision under HB 307 is found in Section 18, on page 11, and it comes close to mirroring the federal Whistle Blower Protection Act. He said the bill also addresses the issue of special trust. He gave the example that a recruiter has a special trust with a recruit, and under HB 307, sexual activities between the two would be prohibited in the ACMJ. He said another provision addresses "recording a person's private areas without consent," for example, filming a military member who is in the shower. This would be prohibited under HB 307.

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REPRESENTATIVE REINBOLD requested more detail on Sections 21 and 22. She said she would like to know if Section 22 addresses drugs as well as alcohol.

LIEUTENANT COLONEL WEAVER said that "drunkenness and incapacitating offenses" comes from ACMJ and the Uniform Code of Military Justice (UCMJ) via "the general article." He explained that there are articles in the UCMJ that require an additional element, such as being detrimental to good order and discipline or reflecting badly on service. He said, "What the Congress has done is they moved it into a substantive crime, into a specific crime, into the UCMJ - and that's the proposal here under the ACMJ - to ... make any kind of member or sentinel or anybody who has a position who would be drunk on duty or unable to perform the duty." He said in the military there are situations in which personnel may use large machinery or weapons and any kind of incapacitation would be prohibitive. He said it doesn't have to be an illegal drug; it could be any kind of drug that could affect someone's ability to be on guard duty, for example.

REPRESENTATIVE REINBOLD said Section 22 addresses being drunk, while Section 21 addresses drugs "or other incapacitating offenses". She asked if the date rape drug is included.

LIEUTENANT COLONEL WEAVER answered, "It includes all drugs, whether over the counter or not." In terms of the date rape drug, he said these sections do not address giving someone else a drug, but rather they address taking a drug that then incapacitates the person who has taken it from performing his/her duty.

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DEPUTY COMMISSIONER DOEHL added that the intent was to include any sort of chemically induced incapacitation in Section 22, as well. He said an amendment may be helpful. He clarified that his department's desire is that a person's taking anything that induces an altered state would be actionable.

REPRESENTATIVE REINBOLD said she would be happy to have this clarification in the bill and would help formulate an amendment.

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REPRESENTATIVE SPOHNHOLZ questioned the exclusion of a sentinel and lookout.

LIEUTENANT COLONEL WEAVER offered his understanding that that is addressed in Section 23. He said it is two separate crimes and the UCMJ has separated the two crimes.

REPRESENTATIVE SPOHNHOLZ offered her understanding that Lieutenant Colonel Weaver was saying that the sentinels and lookouts are addressed in Section 23.

LIEUTENANT COLONEL WEAVER confirmed that is correct.

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REPRESENTATIVE SADDLER asked why, in section 21, there is reference to both alcohol and drugs, while Sections 22 and 23 do not reference both.

LIEUTENANT COLONEL WEAVER said he thinks it would be worthwhile for the department to take a look at that.

REPRESENTATIVE SADDLER noted that Section 23 references "a lookout or sentinel who wrongfully sits down". He stated his understanding that a soldier's general orders include walking a post in a military manner, which he assumed means "standing and awake." He asked if that was not "incorporated by inclusion."

LIEUTENANT COLONEL WEAVER indicated that it depends on the situation, for example, if [the soldier] was ordered to "walk around" but was not doing so.

REPRESENTATIVE SADDLER observed that Sections 15-22 look like issues that the federal UCMJ covers. He asked if there is something in Alaska's State Military Code that could allow the

adoption of "these significant changes and additions just by reference."

LIEUTENANT COLONEL WEAVER answered that that is one method of doing it, which other states are utilizing. He said, "The Alaska method has been to specify each offense and update the codes as the codes need updating."

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CHAIR TUCK indicated that one advantage to the updating of the codes is to allow military service personnel to look up codes and be able to identify them clearly.

REPRESENTATIVE SADDLER asked if that meant that redundancy was acceptable as long as it meant there was "clarity of reference and application."

CHAIR TUCK responded yes. He added that sometimes the provisions under code are moved in order for everything to "follow logical order."

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REPRESENTATIVE PARISH asked what the potential legal consequences would be if the Alaska Code of Military Justice was out of step with the UCMJ.

LIEUTENANT COLONEL WEAVER answered that he does not know about legal consequences. He said the ACMJ and UCMJ aim to provide a disciplined military force, both overseas and domestically, and this happens when the Alaska military force mirrors that of the national force.

REPRESENTATIVE PARISH said he thinks that is "a commendable goal."

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REPRESENTATIVE SADDLER directed attention to Section 7, beginning on page 6, [which refers to the Servicemembers Civil Relief Act], and he asked for a briefing as to the providence and provisions of the Act.

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DEPUTY COMMISSIONER DOEHL stated that the Servicemembers Civil Relief Act (SCRA) "is a federal body of law, which arose to protect servicemembers from being penalized for things beyond their control as incident to military duty on the civilian side." For example, a service member ordered to relocate is not liable for the duration of the payments on a lease for the period after relocation. Other services that would apply include Internet and athletic clubs. He said the original SCRA has existed for decades and was re-codified recently on the federal side to bring it up to date.

REPRESENTATIVE SADDLER said he would like more information regarding the provisions of the SCRA before it came time to vote on HB 307. He then asked if the SCRA pertains to long- or short-term deployments.

DEPUTY COMMISSIONER DOEHL answered, "It is designed to cover a timespan where it is no longer feasible to retain a service." He said that would probably not be a weekend deployment but certainly would cover a 90-day deployment.

REPRESENTATIVE SADDLER asked why it would be necessary to apply [the SCRA] to the organized militia. He said he understands that the Alaska National Guard, the Alaska Naval Militia, and the State Defense Force are considered organized militia, and he questioned why it is necessary to include the State Defense Force in Section 6.

DEPUTY COMMISSIONER DOEHL answered there are federal provisions for when the Alaska Naval Militia or the two Alaska National Guard components are in a federal status. He said, "This provision deals with when placed into a state active duty for an extended period." For example, for disaster recovery operations lasting six months to a year, where militia are called to do state active duty away from their primary residences "where they would have these services lined up." He concluded, "So, to the extent the Alaska organized militia is put into state active service, these provisions would apply." In response to a follow-up question, he said while there has been no circumstance to date wherein members of the Alaska organized militia have been placed into active duty for more than 90 days, he could envision that happening in case of a disaster, such as a tsunami that affects several communities. He said he based that on the relief efforts following Hurricane Katrina, where 90- and 179-day tours were common. No one was sent from Alaska, but something could happen within the state.

REPRESENTATIVE SADDLER asked if there is any compensation given to military personnel required to relocate for more than 90 days - "any moving pay or allowances that might be redundant to what the SCRA provides."

DEPUTY COMMISSIONER DOEHL answered that the department provides pamphlets listing the specter of SCRA benefits available, as well as some exemplar packets from active services regarding permanent change of station information. He said the short answer, though, is no. The military pays for the following: the cost of moving household goods from point A to point B; travel costs for the military member and his/her family; and other incidental costs, such as any period of time a member is in transient housing before more permanent housing is available. There is no funding available for contract severance penalties, he said.

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REPRESENTATIVE SPOHNHOLZ summarized that [under HB 307], if the department deems it necessary to relocate a military member for official duty of at least 90 days, then the military member would not have to pay his/her cable bill, for example, while on deployment.

DEPUTY COMMISSIONER DOEHL answered yes, but said he would like to check on the part about 90 days.

REPRESENTATIVE SPOHNHOLZ pointed to language beginning on page 6, line 18, which read as follows:

if the member receives official orders to relocate for a period of military service of at least 90 days to a location that does not support the contract and the member provides written notice to the service provider as required under (c) of this section:

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REPRESENTATIVE SADDLER asked if a person who serves with the Alaska State Defense Force selected for training and sent to a Lower 48 facility would be on active state service for that period and eligible for protections under the SCRA and other provision of HB 307.

DEPUTY COMMISSIONER DOEHL said conceivably the department could put an Alaska State Defense Force member in state activity duty

into out-of-state training in excess of 90 days; however, he added that he cannot fathom that ever happening. He explained that as a matter of course, the department does not place Alaska State Defense Force members in state active duty for training. He added, "Some have volunteered on their own time, but we don't pay."

REPRESENTATIVE SADDLER asked if the provider of Internet service, for example, would - under the provisions of Section 6 - have to "eat that" or just "accept that's the way that is."

DEPUTY COMMISSIONER DOEHL answered that's correct.

REPRESENTATIVE SADDLER remarked that a better way to put that is that "that could be their contribution to national defense."

DEPUTY COMMISSIONER DOEHL responded that's correct.

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CHAIR TUCK commented, "Although they may have a contract, they're not obligated to provide any more service, as well. So, it's not like they're out of money, just out of ... the contract."

CHAIR TUCK announced that HB 307 was held over.

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ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:19 p.m.