

**HB**

**307**

<TARGET><BILL>HB 307</BILL><SUBJECT>HB  
307</SUBJECT><COMM>SJUD30</COMM></TARGET>



# Representative Chris Tuck

## House Majority Leader

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

### House Bill 307 Military Justice and Militia Civil Relief Sponsor Statement

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 service-members 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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# Representative Chris Tuck

## House Majority Leader

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

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

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

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

**Section 3.** Amends AS 12.63.100(6) to include within the definition of sex offense indecent exposure under AS 26.05.900(c) and other qualifying conviction under AS 26.05.890 and 26.05.893 as specified.

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

**Section 5.** Amends AS 18.65.087(a) to include a court judgment that the Department of Public Safety receives from the Department of Military and Veterans Affairs for convictions under AS 26.05.890(h), 26.05.893(d), 26.05.900(e), or 26.05.935(d) as information for the sexual offender registry.

**Section 6.** Amends AS 26.05.135 to extend the benefits of the Servicemembers Civil Relief Act, especially those pertaining to consumer transactions, to all members of the Alaska Organized Militia (AOM), i.e., the Alaska Army National Guard, the Alaska Air National Guard, the Alaska Naval Militia, and the Alaska State Defense Force.

**Section 7.** Amends AS 26.05.135 by adding new subsections: (b) allowing Servicemembers to terminate of certain contracts for consumer services if ordered to relocate; (c) directing that Servicemembers must furnish service providers with written notice of contract termination and written proof of relocation orders; (d) allowing Servicemembers to reinstate terminated contracts upon separation from the AOM; (e) prohibiting service providers from charging a Servicemember for terminating a contract and releasing Servicemembers from any payment obligation after the termination; and (f) defining militia members as members of the AOM,

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and the organized militia as including the Alaska (Army and Air) National Guard, Alaska Naval Militia, and Alaska State Defense Force and defining servicemember of the armed forces of the United States or a member of the organized militia of the state.

**Section 8.** Amends AS 26.05.380 (b) by striking language reserving Servicemembers' ability to reject non-judicial punishment and opt instead for court-martial, essentially restoring the "no turn-down" clause proposed in the original ACMJ update of 2015-16.

**Section 9.** Amends AS 26.05.555 to reflect additional language in the amended Rules for Courts-Martial 201 (c) that provides judges may hold a person in contempt of court for willfully disobeying a court-martial order or creating a disturbance during proceedings.

**Section 10.** Amends AS 26.05 to add a new section AS 26.05.697 making failing to reveal or concealing from authorities serious offenses committed by others offenses, and militia members committing these offenses subject to punishment as courts-martial may direct.

**Section 11.** Amends AS 26.05.700 to allow an accused to be found guilty of lesser offenses necessarily included in offenses charged or of attempts to commit either, regarding offenses designated by the President in an appendix to the 2017 Manual for Courts-Martial.

**Section 12.** Amends AS 26.05.715 to add a new subsection (c) prohibiting a member of the militia from soliciting or advising another person to commit an offense under this chapter, and making militia members committing such offenses subject to punishment as courts-martial may direct.

**Section 13.** Amends AS 26.05 by adding new section AS 26.05.737 prohibiting militia members from wrongfully manipulating, creating, using, selling, or otherwise falsifying official identifications, passes, permits, or certificates and making militia members committing these offenses subject to punishment as courts-martial may direct.

**Section 14.** Amends AS 26.05.740 to specify intentionally or wrongfully jumping into the water from a vessel in use by the armed forces so as to miss a transportation movement required by duty is an offense and a militia member committing such an offense is subject to punishment as a court-martial may direct.

**Section 15.** Amends AS 26.05 by adding new section AS 26.05.767 describing impersonation of officers, non-commissioned officers, petty officers, agents, or officials, and AS 26.05.768 designating wearing unauthorized insignias, decorations, badges, ribbons, devices, or lapel buttons as offenses, and militia members committing these offenses are subject to punishment as courts-martial may direct.

**Section 16.** Amends AS 26.05 by adding new section AS 26.05.785 designating a militia member who engages in inappropriate release of a prisoner or unlawfully drinking an alcoholic beverage with a prisoner is subject to punishment as a court-martial may direct.

**Section 17.** Amends AS 26.05 by adding new section AS 26.05.793 making wrongful interference with an adverse administrative proceeding an offense, and a militia member committing such an offense subject to punishment as a court-martial may direct.

**Section 18.** Amends AS 26.05 by adding new section AS 26.05.796 designating a militia member engaging in wrongful refusal to testify to an official military proceeding as subject to punishment as a court-martial may direct. Adds a new section AS 26.05.798 prohibiting retaliation against a person for reporting or planning to report a criminal offense, and making militia members who commit such offenses subject to punishment as courts-martial may direct.

**Section 19.** Amends AS 26.05 by adding new section AS 26.05.833 prohibiting certain offenses against correctional custody and restriction, including escape and exceeding the limits of physical restriction, and making militia members committing such offenses subject to punishment as courts-martial may direct.

**Section 20.** Amends AS 26.05.835 to add a new subsection (b) providing a militia member violating or falsely making an official oath is subject to punishment as a court-martial may direct.

**Section 21.** Amends AS 26.05.855(b) to make a conforming change to remove the reference of a controlled substance in AS 26.05.870 (c), the definition of a controlled substance was moved to the definition section in AS 26.05.990.

**Section 22.** Amends AS 26.05.855(c) to make a conforming change to remove the reference of a controlled substance in AS 26.05.870 (c), the definition of a controlled substance was moved to the definition section in AS 26.05.990.

**Section 23.** Amends AS 26.05.860 changing the offense of "Drunk on Duty" to "Drunkenness And Other Incapacitating Offenses" offenses to include incapacitation due to indulgence in any alcoholic beverage or any drug, and making militia members who commit such offenses subject to punishment as courts-martial may direct.

**Section 24.** Amends AS 26.05.860 by adding new subsection (b) directing a member of the militia, while in status as a prisoner is drunk or under the influence of a controlled substance without a valid prescription, shall be punished as a court-martial may direct.

**Section 25.** Amends AS 26.05.865 to include sentinels loitering or wrongfully sitting down on duty or is unable to perform their duty as a result from any alcoholic beverage or drug is subject to punishment as courts-martial may direct.

**Section 26.** Amends AS 26.05 by adding new section AS 26.05.867 directing militia members engaged in improper behavior toward a sentinel or lookout are subject to punishment as courts-martial may direct.

**Section 27.** Amends AS 26.05.890(a) to enumerate the offenses for which militia members would be guilty of sexual assault and subject to punishment as courts-martial may direct.

**Section 28.** Amends AS 26.05.890 by adding news subsections (g) defining when court-martial convening authorities may reduce, commute, or suspend sentences imposed by court-martial for offenses of sexual assault, and (h) requiring courts-martial to provide offenders convicted of sexual assault with information regarding sex offender registration under AS 12.63.010.

**Section 29.** Amends AS 26.05 by adding new section AS 26.05.893 describing prohibited activities between militia members in positions of special trust and military recruits, trainees, and subordinates, and prescribing such offenses are subject to punishment as courts-martial may direct. AS 26.05.893 specifies consent is not a defense for any conduct at issue in a prosecution under this statute.

**Section 30.** Amends AS 26.05 by adding new section AS 26.05.897 defining the offenses of assault and aggravated assault, and specifying militia members committing these offenses are subject to punishment as courts-martial may direct.

**Section 31.** Amends AS 26.05.900(a) to include broadcasting and distribution of indecent recordings as described in this section as offenses for which militia members would be subject to punishment as courts-martial may direct.

**Section 32.** Amends AS 26.05.900(d) by adding a new paragraph defining “recording” as that contained in the 2016 Amendment to article 120c of the UCMJ, “a still or moving visual image captured or recorded by any means,” and “without the other person’s consent” as having the same meaning as given to “without consent” in AS 11.41.470.

**Section 33.** Amends AS 26.05.900 by adding new section (e) requiring courts-martial to provide offenders convicted of sexual assault with information regarding sex offender registration under AS 12.63.010.

**Section 34.** Amends AS 26.05 by adding new section AS 26.05.913 making militia members engaged in willfully and unlawfully manipulating public records with ill intent subject to punishment as courts-martial may direct.

**Section 35.** Amends AS 26.05.935 by adding new subsection (d) requiring offenders convicted of enumerated offenses under (b) of this section to register as sex offenders under AS 12.63, and requiring courts-martial to provide offenders with information regarding sex offender registration.

**Section 36.** Amends AS 26.05 by adding new sections AS 26.05.940 prohibiting willful and intentional misuse of government computers, programs, codes, and data, and AS 26.05.945 prohibiting knowing and willful violation of the limits of a medical quarantine, and making militia members engaged in such offenses subject to punishment as a court-martial may direct.

**Section 37.** Amends AS 26.05.990 to include the definition of a controlled substance. The definition was originally located in AS 26.05.870(c).

**Section 38.** Repeals AS 26.05.870 (c).

**Section 39.** Amends the uncodified law of the State of Alaska to reconcile the generally equivalent military and civilian offenses, and specify the dates the new measures above will apply to cases involving these offenses.

**Section 40.** Amends the uncodified law of the State of Alaska to allow this Act to take effect only after The Adjutant General (TAG) notifies the revisor of statutes on or before 1 January

2019 the President of the United States has signed an Executive Order designating the effective date, under the National Defense Authorization Act, of the amendments to the UCMJ made by the Military Justice Act of 2016.

**Section 41.** Amends the uncodified law of the State of Alaska to allow Sections 1-5, 8-38, and 39 (b)-(d) of this Act to take effect only if TAG notifies the revisor of statutes as prescribed in Section 40 above.

**Section 42.** Specifies if Sections 1-5, 8-38, and 39 (b)-(d) of this Act take effect under Section 41 above, they take effect 1 January 2019.

**Section 43.** Establishes 1 July 2018 as this Act's effective date, except as provided in Section 38 above.

\*Sectional prepared by Department of Military and Veterans Affairs



## STATE ENHANCEMENTS TO THE SERVICE MEMBER'S CIVIL RELIEF ACT (SCRA)

*As a result of military duty, Service members can have unintended consumer concerns for which they can be protected through state consumer protection policies.*

**KEY MESSAGE:** Service members are protected as consumers through the federal SCRA; however, these protections do not extend to members of the National Guard under state activation, or protect Service members concerning obligations that occur while on active duty. States can provide additional consumer protections that can mirror and extend the federal SCRA.



### DISCUSSION POINTS:

- The 2003 federal SCRA generally provided protections associated with obligations made prior to Federal activation, and generally covered stays of some court proceedings; protection from default judgements, evictions, foreclosures and loss of insurance coverage; and limited certain taxes and obligations made before entering active duty.
- Updates to the SCRA since 2003 extended it to cover residential leases, motor vehicle leases and telephone service contracts entered while on active duty, in order to provide relief to Service members when they deploy or assigned overseas, or in some circumstances where they have a permanent change of station. Other changes have also provided remedies and civil enforcement by the U.S. Attorney General.
- Many states have applied several of the protections found in the federal SCRA to members of the National Guard under state activation; however, these protections vary widely. Some states have extended their consumer protections beyond what is included in the federal SCRA through state statutes, and applied these additional protections to Service members on federal active duty as well as state activations.
- DoD recognizes that states need to develop protections that make sense within the context of their consumer protection laws. DoD requests states consider protections:
  - Applicable to obligations made while on active duty for members of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Coast Guard, National Guard, Public Health Services and National Oceanic and Atmospheric Administration);<sup>1</sup>
  - Applicable to a contract to provide telecommunication services, internet services, television services, athletic club or gym memberships, or satellite radio services;<sup>1</sup>
  - Applicable as well to certain residential lease/rental agreements due to moves into government owned/leased housing.

Title VIII of the SCRA provides authority to state attorneys general to enforce the provisions of the federal SCRA (Section 801 – 50 U.S.C. §597). In February 2012, the federal government and 49 state attorneys general reached an unprecedented joint agreement of \$25 Billion with the nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses.

<sup>1</sup> Protections approved as part of Indiana House Bill 1564, 2015



## STATE ENHANCEMENTS TO THE SERVICE MEMBER'S CIVIL RELIEF ACT (SCRA)

**SUBJECT:** Service members are protected as consumers through the federal SCRA; however, the federal law does not protect Service members concerning obligations that occur while on active duty. States can provide additional consumer protections that can mirror and expand the federal SCRA.

**PRINCIPLES:** DoD recognizes that states need to develop protections that make sense within the context of their consumer protection laws. DoD requests states consider protections:

- Applicable to active duty for members of the Uniformed Services, (which parallels members covered by the federal SCRA: Army, Navy, Marine Corps, Air Force, Coast Guard, National Guard, Public Health Services and National Oceanic and Atmospheric Administration);
- Applicable to a contract to provide telecommunication services, internet services, television services, athletic club or gym memberships, or satellite radio services;
- Applicable as well to certain residential lease/rental agreements due to moves into government owned/leased housing.

### EXAMPLES:

**INDIANA HB 1456 (2015):** SECTION 4. IC 10-16-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 20. Servicemembers Civil Relief Act

Sec. 1. A violation of the federal Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.) is a violation of this chapter. This chapter is intended to supplement rights and protections provided in the federal Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.).

Sec. 2. The following definitions apply throughout this chapter:

(1) "Military service" means:

(A) in the case of a servicemember who is a member or reserve member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, full-time duty in the active military service of the United States, including:

(i) full-time training duty;

(ii) annual training duty; and

(iii) attendance while at a school designated as a service school by federal law or by the secretary of the military department concerned;

(B) in the case of a member or reserve member of the Indiana National Guard, service under a call to active:

(i) service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty (30) days in response to a national emergency declared by the President of the United States; or

(ii) duty as defined by IC 10-16-7-23(a) for a period of more than thirty (30) consecutive days;

(C) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; or

(D) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) "Servicemember" means an individual engaged in military service.

Sec. 3. After giving notice to a plaintiff, as applicable, the dependent of a servicemember has the same rights and protections provided to a servicemember under Title II of the federal Servicemembers Civil Relief Act (50 U.S.C. App. 521 through 527).

Sec. 4. (a) In addition to the rights and protections regarding consumer transactions, contracts, and service providers included in Title III of the federal Servicemembers Civil Relief Act (50 U.S.C. App. 531 through 538), a servicemember may terminate a contract described in subsection (b) at any time after the date the servicemember receives military orders to relocate for a period of service of at least ninety (90) days to a location that does not support the contract.

(b) This section applies to a contract to provide any of the following:

- (1) Telecommunication services.
- (2) Internet services.
- (3) Television services.
- (4) Athletic club or gym memberships.
- (5) Satellite radio services.

(c) Termination of a contract must be made by delivery of a written or electronic notice of the termination and a copy of the servicemember's military orders to the service provider. If a servicemember terminates a contract, the service provider shall provide the servicemember with a written or electronic notice of the servicemember's rights posted on the Indiana National Guard's Internet web site as required by IC 10-16-6-13.

**OREGON 2083 (2013):** SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 399.

SECTION 2. (1) As used in this section, "service member" means:

(a) A member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 30 or more consecutive days.

(b) A member of the Armed Forces of the United States, as that term is defined in ORS 348.282, who is called into active federal service under Title 10 of the United States Code.

(2)(a) Except as provided in subsection (6) of this section, a service member who has obtained the following services from a telecommunications service provider, an Internet service provider, a health club as defined in ORS 431.680, a health spa as defined in ORS 646A.030 or a provider of television services may terminate or suspend the provision of services upon written notice and as provided in paragraph (b) of this subsection:

- (A) Telecommunications services.
- (B) Internet services.
- (C) Health spa services as defined in ORS 646A.030.
- (D) Exercise or athletic activities offered by a health club.
- (E) Television services, including but not limited to cable television, direct satellite and other television-like services.

(b) The service member must provide proof to the service provider of the official orders showing that the service member has been called into active service:

- (A) At the time written notice is given; or
- (B) If precluded by military necessity or circumstances that make the provision of proof at the time of giving written notice unreasonable or impossible, within 90 days after written notice has been given.

(3) A termination or suspension of services under this section is effective on the day written notice is given under subsection (2) of this section.

(4)(a) A service member who terminates or suspends the provision of services under this

section and who is no longer in active service may reinstate the provision of services on the same terms and conditions as originally agreed to with the service provider before the termination or suspension upon written notice to the provider that the service member is no longer in active service. Written notice under this subsection must be given within 90 days after termination of the service member's active service.

(b) Upon receipt of the written notice of reinstatement, the service provider shall resume the provision of services or, if the services are no longer available, provide substantially similar services within a reasonable time not to exceed 30 days from the date of receipt of the written notice of reinstatement.

(5) A service member who terminates, suspends or reinstates the provision of services under this section:

(a) May not be charged a penalty, fee, loss of deposit or any other additional cost because of the termination, suspension or reinstatement; and

(b) Is not liable for payment for any services after the effective date of the termination or suspension, or until the effective date of a reinstatement of services as described in subsection (4) of this section.

(6) A service member may terminate a contract for any service provided by a commercial mobile radio services provider in accordance with 50 U.S.C. 535a.



# Representative Chris Tuck

## House Majority Leader

Alaska State Legislature

District 23 - Representing Dimond Estates, Foxridge, Taku,  
Campbell, Northwood and Windemere

### MEMORANDUM

March 2, 2018

**TO:** Senator John Coghill  
Chair, Judiciary Committee

**FROM:** Rep. Chris Tuck  
House Majority Leader

Handwritten initials "C.T." circled in black ink.

**SUBJ:** Memo of Changes for HB307

The House Military and Veterans Affairs Committee adopted two amendments which are reflected in version D.

- The bill references a member of the militia may not consume alcohol on duty. To keep statutes consistent the committee added in "or a drug" in sections 16, 21 and 22. And added the definition of a controlled substance in section 22.
- Changed "a member of the organized militia" to "servicemembers" in the title and section 7. Servicemembers has the definition of a member of the armed forces of the United States or a member of the organized militia of the state. The reason for this change was to ensure those who serve in the united states armed forces were also included for protections under the Servicemembers Civil Relief Act.

The House Judiciary Committee adopted one amendment which made the following changes in version J:

- Changed "drug" to "controlled substances" in AS 26.05.860 which is located on page 12, section 23 in version J.
- Added "as the result of the use of any alcoholic beverage or drug, is unable to properly perform the sentinel's or lookout's duties" in AS 26.05.865, which is now section 25 on page 13 in version J. This was to conform with AS 26.05.860.
- Conforming changes needed to be done, including moving the definition of a controlled substance from section AS 26.05.870 (c) to the definition section located in AS 26.05.990. This resulted in the addition of two new sections in the bill, which are now section 21 and 22 in version J, for only the reason of moving the definition.

## **Explanation of Changes for HB 307**

- The bill adds sex offender registration requirements for certain Alaska Code of Military Justice (ACMJ) offenses. Consistent with other Alaska crimes that require registration, this adds the requirement to register for convictions under laws of other jurisdictions similar to those ACMJ offenses to sections 1, 2, and 3.
- Adds to Section 3 a limitation on the requirement to register under AS 26.05.893 similar to the limitation on the registration requirement on AS 26.05.890. This ensures the registration requirements apply to similar offenses as those under the Alaska criminal code and are not overly broad.
- Section 11 changes the basis of defining ACMJ offenses as felony or misdemeanor to the possible penalty rather than the actual penalty. This corresponds to the definition of felony and misdemeanor crimes in common law and the Alaska criminal code.
- Sections 5 and 40 extend DNA and fingerprint collection requirements that exist for civilian crimes to ACMJ crimes.
- Maximum penalties are added to the new ACMJ offenses in the bill consistent with the formulation of already existing ACMJ offenses. The punishments are consistent with the punishments under the federal Uniform Code of Military Justice.

# RECOMMENDED HB 307 AMENDMENTS

**CHANGES ARE BASED ON VERSION 30-LS1099J AND HIGHLIGHTED IN RED**

\* **Section 1.** AS 12.63.100(1) is amended to read:

(1) "aggravated sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

- (i) sexual assault in the first degree;
- (ii) sexual assault in the second degree;
- (iii) sexual abuse of a minor in the first degree; or
- (iv) sexual abuse of a minor in the second degree; [OR]

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410, 11.41.434, or a similar law of another jurisdiction or a similar provision under a former law of this state;

**(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under**

**(i) AS 26.05.890 or a similar law of another jurisdiction if the person engaged in or attempted to engage in sexual penetration; or**

**(ii) AS 26.05.893 or a similar law of another jurisdiction if the prohibited sexual activity in which the member of the militia engaged or attempted to engage in sexual penetration;**

\* **Sec. 2.** AS 12.63.100(2) is amended to read:

(2) "child kidnapping" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping;

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit kidnapping if the victim was under 18 years of age at the time of the offense;

[OR]

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.300, or a similar law of another jurisdiction or a similar provision under a former law of this state, if the victim was under 18 years of age at the time of the offense;  
or

**(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under AS 26.05.935(b) or a similar law of another jurisdiction if**

**(i) the member of the militia commits the enumerated offense of kidnapping, punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice); and**

**(ii) the victim was under 18 years of age at the time of the offense;**

\* **Sec. 3.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense **or for an offense under AS 26.05.900(c);**

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2)(B) if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200;

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; [OR]

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(e);

(x) **AS 26.05.890 if the person engaged in sexual penetration or sexual contact with the victim;**

(xi) **AS 26.05.890 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim;**

(xii) **AS 26.05.893 if the person engaged in sexual penetration or sexual contact with the victim;**

(xiii) **AS 26.05.900(a)(1) - (4) if the victim is under 18 years of age at the time of the offense;**

(xiv) **AS 26.05.900(b) if the person who is compelled to engage in an act of prostitution is under 20 years of age at the time of the offense;**

(xv) AS 26.05.900(c) if the exposure is before a person under 16 years of age and the offender has a previous conviction for that offense or for an offense under AS 11.41.460;

(xvi) AS 26.05.900 if, at the time of the offense, the victim is under a duty to obey the lawful orders of the offender, regardless of whether the offender is in the direct chain of command over the victim; or

(D) an offense, or an attempt, solicitation, or conspiracy to commit an offense, under AS 26.05.935(b), or a similar law of another jurisdiction, if the member of the militia commits one of the following enumerated offenses punishable under Article 134, 10 U.S.C. 934 (Uniform Code of Military Justice):

(i) child pornography; or

(ii) pandering and prostitution if the person who is induced, enticed, caused, or procured to engage in a sexual act is under 20 years of age at the time of the offense;

**THE FOLLOWING DO NOT APPEAR IN THE INITIAL BILL. THEY HAVE BEEN ADDED TO DRAFT CS VERSION U.**

\* Sec. \_\_. AS 26.05.590(a) is amended to read:

A court-martial may not impose a punishment that exceeds the limits set out in the code of military justice and may not impose a sentence of death. A sentence of confinement imposed under this chapter may not exceed 10 years. An offense under this chapter for which a sentence of confinement for a term of more than one year **could be** imposed is a felony offense. Except for convictions by a summary court-martial and except as otherwise specifically provided in the code of military justice, all other offenses under this chapter for which a sentence of confinement for a term of one year or less **could be** imposed are misdemeanors. A conviction by a summary court-martial is a violation.

\* Sec. \_\_. AS 44.41.035 is amended to read:

The Department of Public Safety shall collect for inclusion into the DNA registration system a blood sample, oral sample, or both, from (1) a person convicted in this state of a crime against a person or a felony under AS 11, **AS 26.05**, or AS 28.35 or a law or ordinance with elements similar to a crime against a person or a felony under AS 11, **AS 26.05**, or AS 28.35, (2) a minor 16 years of age or older, adjudicated as a delinquent in this state for an act that would be a crime against a person or a felony under AS 11, **AS 26.05**, or AS 28.35 if committed by an adult or for an act that would violate a law or ordinance with elements similar to a crime against a person or a felony under AS 11, **AS 26.05**, or AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA donor for use in forensic validation, forensic protocol development, quality control, or population or statistical data bases, (5) a person required to register as a sex offender or child kidnapper under AS 12.63, and (6) a person arrested for a crime against a person or a felony under AS 11, **AS 26.05**, or AS 28.35, or a law or ordinance with elements similar to a crime against a person or a felony under AS 11, **AS 26.05**, or AS 28.35. The department also may collect for inclusion into the DNA registration system a blood sample, oral sample, or tissue sample from crime scene evidence or from unidentified human remains. The DNA identification registration system consists of the blood, oral, or tissue samples drawn under this section, any DNA or other blood grouping tests done on those samples, and the identification data related to the samples or tests. Blood samples, oral samples, and tissue samples not subject to testing under this section, and test or identification data related to those samples, may not be entered into, or made a part of, the DNA identification registration system.

\* Sec. \_\_. AS 12.80.060(g)(2)(A) is amended to read:

due to a violation of a federal or state criminal law, **the Alaska Code of Military Justice**, or municipal criminal ordinance;

## **RECOMMENDED MAXIMUM PUNISHMENTS FOR HB 307**

### **THESE WERE INCORPORATED INTO THE APPLICABLE SECTIONS**

- 26.05.697. Misprision of a serious offense. Dishonorable discharge and confinement for 3 years.
- 26.05.715. Solicitation. Dishonorable discharge and confinement for up to the maximum punishment of the underlying offense.
- 26.05.737. False or unauthorized pass offenses. Dishonorable discharge and confinement for 1 year.
- 26.05.767. Impersonation of officer, noncommissioned officer, petty officer, agent or official.  
.767(b). Dishonorable discharge and confinement for 3 years.  
.767(c). Bad-conduct discharge and confinement for 6 months.
- 26.05.768. Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel pin. Bad-conduct discharge and confinement for 6 months.
- 26.05.785. Unlawfully drinking with a prisoner. Dishonorable discharge and confinement for 1 year.
- 26.05.793. Wrongful interference with adverse administrative proceeding. Dishonorable discharge and confinement for 1 year.
- 26.05.796. Wrongful refusal to testify. Dishonorable discharge and confinement for 1 year.
- 26.05.798. Retaliation. Dishonorable discharge and confinement for 1 year.
- 26.05.833. Offenses against correctional custody and restriction.  
.833(a). Dishonorable discharge and confinement for 1 year.  
.833(b). Dishonorable discharge and confinement for 1 year.  
.833(c). Bad-conduct discharge and confinement for 6 months.
- 26.05.835. False swearing. Dishonorable discharge and confinement for 1 year.
- 26.05.860. Drinking with a prisoner. Dishonorable discharge and confinement for 1 year.

26.05.867. Disrespect toward a sentinel or lookout. Dishonorable discharge, but no confinement.

26.05.893. Prohibited sexual activities with military recruit or trainee by person of special trust. Dishonorable Discharge and confinement for 5 years.

26.05.900(a). Broadcasts a recording of another person's private area. Dishonorable discharge and confinement for 7 years.

26.05.913. Public records offenses. Dishonorable discharge and confinement for 5 years. [see 11.56.815]

26.05.940. Offenses concerning government computers.

.940(a). Dishonorable discharge and confinement for 10 years.

.940(b). Dishonorable discharge and confinement for 5 years.

.940(c). Dishonorable discharge and confinement for 10 years.

26.05.495. Breach of medical quarantine. Dishonorable discharge and confinement for 1 year.



# Representative Chris Tuck

## House Majority Leader

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 41.** Repeals AS 26.05.870 (c).

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

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

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

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

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

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