

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Eighth Session
February 23, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 9:09 a.m. on Monday, February 23, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website: www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblywoman Melissa Woodbury (Excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Aubrie Bates, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

James M. Wright, Director, Department of Public Safety
Jerome Tushbant, Chief, Capitol Police Division, Department of Public Safety
Captain Dana A. Grigg, Deputy Staff Judge Advocate General, Office of the Staff Judge Advocate, Nevada National Guard
Scott F. Katherman, Esq., AGR Judge Advocate and Ethics Advisor, Joint Force Headquarters, Nevada Army National Guard

Chairman Ellison:

[Roll was called and rules and protocol were explained.] Today, we will hear two bills. We will open the hearing on Senate Bill 82.

Senate Bill 82: Removes certain obsolete provisions relating to security services provided by the Capitol Police Division of the Department of Public Safety. (BDR 27-358)

James M. Wright, Director, Department of Public Safety:

With me today is Chief Jerome Tushbant. We will present Senate Bill 82. We hope that this will be a simple one to start your Monday morning. After the presentation, we will be glad to answer any questions. I will now turn to Chief Tushbant for the presentation.

Jerome Tushbant, Chief, Capitol Police Division, Department of Public Safety

I am here today to talk to you about Senate Bill 82, which is in reference to the removal of language from current law, *Nevada Revised Statutes* (NRS) 331.140, subsection 3, stating that the Capitol Police Division has responsibility for the protection of justices of the Supreme Court, judges of the Court of Appeals, and security services at the locations where the justices or judges are performing work. Essentially, this request is to clean up language that is no longer relevant, as the Supreme Court has established and hired Marshals who now serve as the security and protection component for both the justices as well as judges of the Court of Appeals. [Chief Tushbant continued to read from prepared testimony ([Exhibit C](#)).]

Chairman Ellison:

I see that this bill passed out of the Senate with 19 yeas and 2 excused. Is there any discussion?

Assemblyman Stewart:

The Supreme Court and the Court of Appeals will now both be protected by their own law enforcement staff which will be paid out of their budgets. Is that correct?

Jerome Tushbant:

Yes, sir. The Nevada Supreme Court has funded and appointed people for both the Supreme Court and the Court of Appeals

Assemblyman Stewart:

I have a question for Legal. How did the Court of Appeals get into NRS even before they were approved?

Eileen O'Grady, Committee Counsel:

There was a companion bill passed last session which carried it out in statute and was effective if the ballot question passed. [Senate Bill No. 463 of the 77th Session.]

Chairman Ellison:

Is there any other discussion? [There was none.] Is anyone wishing to testify in favor of Senate Bill 82? [There was no one.] Is anyone wishing to testify in opposition to S.B. 82? [There was no one.] Is anyone wishing to testify as neutral to S.B. 82? [There was no one.] Please provide closing arguments.

Jerome Tushbant:

Thank you for your time.

Chairman Ellison:

We will close the hearing on Senate Bill 82. We will open the hearing for Senate Bill 90.

Senate Bill 90: Confers upon a person who is subject to the Nevada Code of Military Justice the right to demand a court-martial in lieu of accepting nonjudicial punishment. (BDR 36-338)

Captain Dana A. Grigg, Deputy Staff Judge Advocate General, Office of the Staff Judge Advocate, Nevada National Guard:

We are here today to provide testimony and to answer questions regarding Senate Bill 90 from the Office of the Military. My goal is to briefly discuss background for the revision request, to summarize the proposed revision, and to answer in full any questions surrounding the bill. [Captain Grigg continued to read from prepared testimony ([Exhibit D](#)).]

The Model State Code of Military Justice was passed by the federal government in 2003 for states to decide whether or not they wanted to incorporate such in their state military code. We did that in the 2012-2013 session for the Nevada Code of Military Justice. This included a revision to the Nonjudicial Punishment section, also referred to as Article 15 of the Uniform Code of Military Justice (UCMJ). We did this mainly to enable commanders a more efficient and expeditious way to maintain good order and discipline. Since we are typically a traditional Guard-member body, approximately three quarters of our organization comes in to do drills on weekends and for two weeks out of the year. At that time, we chose to follow the Model State Code to allow commanders the option to not offer court-martial in lieu of nonjudicial punishment when it did not involve a restraint of freedom.

However, about two years after the revision of NRS 412, the Office of the Military through the Adjutant General (TAG) has decided to fall back in line with the UCMJ regarding nonjudicial punishment. The UCMJ mandates that service members have the option to accept a court-martial in lieu of submitting solely to nonjudicial punishment, regardless of whether or not there is a restraint of freedom. In operational versus strategic use in the National Guard and working more and more closely with active duty service members over the last 15 years, aligning with the UCMJ better serves the Nevada National Guard at this time. On behalf of the Office of the Military and the Nevada National Guard, we ask that you approve S.B. 90 in whole. We appreciate your time and will gladly answer any questions.

Assemblywoman Neal:

What happened in the last year and a half to make you decide to realign yourself with the UCMJ?

Dana Grigg:

I will speak for the Air Guard and ask Major Katherman to speak for the Army Guard.

From the perspective of TAG at the time, we were looking to do a huge overhaul of NRS Chapter 412. It had not been revised since 1967. We looked at all 54 states and territories and did a general poll of where everyone stood on the suggested revisions from 2003 from the Model State Code. It did have the provision about nonjudicial punishment.

I believe at the time we were the 37th state to add a substantial portion of the Model State Code to our statute. We did pretty well with that provision; however, over the last year and a half, we came together as a Judge Advocate General's (JAG) Corps and looked at the trends in both the Air and Army Corps. It seemed unsettling, especially in light of those in active duty, to not allow the service member the option of a court-martial since that is what the UCMJ allows for, as well. Although it was working well for us, it seemed that it would be better practice for our state to fall back in line with the UCMJ and to allow the service members the option of a court-martial no matter what. The Article 15 service members were having stripes taken. We were telling commanders that they could take the stripe away and not offer a court-martial. It seemed that we needed to tweak that provision since we were not having a lot of them. We can manage the ability to offer the court-martial and still effectuate that punishment, but in a better way alongside the UCMJ.

We are not saying that it is not an efficient matter or that it is a bad thing the Model State Code did. However, it is probably better for those states that have larger Guards. Our state only has approximately 4,200 members. It seemed that we could, as a JAG Corps, efficiently manage if someone chose to have a court-martial. Additionally, we could better manage those 4,200 members, as opposed to the Pennsylvania Guard or the California Guard. They have thousands and thousands of members. It is understandable why the Model State Code was written the way it was for those particular states. However, for our state, it seems that we should be able to fall in line with the UCMJ and better effectuate that. The Army has even put more impetus on allowing for a court-martial in lieu of nonjudicial punishment. Major Katherman will speak to that.

Scott F. Katherman, Esq., AGR Judge Advocate and Ethics Advisor, Joint Force Headquarters, Nevada Army National Guard:

I agree with everything that Captain Grigg just stated. I would like to add a couple of other things because the Army sees things a little differently than the Air Guard. We have a lot more service members. One thing we do see quite

often is a couple of our own Judge Advocates will be activated and sent overseas. When they are activated and go overseas and practice under the UCMJ, they have to deal with the specific requirements and dictates set forth in the UCMJ. One of those is to follow the requirements of Article 15 which authorizes the option to request a court-martial in lieu of a nonjudicial punishment by a commander. We think this would be a lot more efficient, just for purposes of knowledge. If we are closer to what is done during active duty, our service members will be prepared when they go overseas because they understand exactly how things operate.

I have no reason to believe that any of our commanders in the Air National Guard or Army Guard are anything but fair. However, the reason the UCMJ allows for the request of a court-martial in lieu of nonjudicial punishment for active duty service members is in some cases it allows for a modicum of fairness for the soldier or the airman. Commanders can always keep it within their wheelhouse and it is not necessarily fair for the soldier or the airman. I would also argue that by doing this and bringing it back to a more superior uniform code, we are ensuring that the service members have the full breadth of due process and fairness that the UCMJ offers. I would be happy to answer any questions.

Assemblywoman Neal:

Outside of a stripe being taken, what is one other trend you have seen?

Dana Grigg:

That was the biggest trend. We are also looking at remuneration for charges on government travel cards, or something to that effect. However, it was mainly the stripes on the Air Force side. The Army side was similar, though there was more regulation involved. They did it a different way. To add to what Major Katherman said, I understand your concern if we give the soldier the opportunity to have a court-martial. We want to fall in line with the operation of the National Guard in active duty. People came in to assist us in those situations.

We also feel very confident as a JAG Corps that we have a lot of tools to offer our commanders. We want to ensure that they are utilizing those tools to the greatest ability they can. We do not feel that changing this to allow the court-martial will affect this. If an airman is considering having a stripe taken, the onus comes upon us as JAG members to explain that if they do take a court-martial, they may be looking at a lot worse. There is a disciplinary elevation that goes along with it. It is still going to be the better option in most cases to take the nonjudicial punishment. We do not believe this will be a game changer that will open the floodgates to court-martial.

Assemblyman Carrillo:

What type of offenses apply to this?

Scott Katherman:

Typically, this is for lesser offenses, such as disobeying a lawful order of a superior commissioned officer or failure to be at the appointed place at the appointed time. It is for things that are specifically military. If we are talking about something much more grave, such as sexual assault or battery, that is the arena in which we would draft a charge sheet and go straight to court-martial anyway. We do not normally look at Article 15 or nonjudicial punishment as the venue for those such things. We are talking about military-specific offenses.

Assemblyman Carrillo:

What was the precedence for the introduction of this bill?

Scott Katherman:

From the Army's perspective, there have been a few instances. I fully support the decisions of the commanders; however, the service members should have the opportunity, the due process, to make the decision. We have had instances in which soldiers as E-7s (Sergeant, First Class) were taken down two ranks. They were full time and that is a substantial pay loss. Soldiers should have the opportunity to make that decision as to whether or not their cases are strong enough to go in front of a court-martial. Both arenas involve the principle of proof beyond a reasonable doubt. However, in the nonjudicial punishment arena, the punishment is given by the commander. Therefore, the commander is essentially the judge, jury, and executioner.

Assemblyman Trowbridge:

I would first like to thank you and those who serve with you for your service. This relates only to those subject to the UCMJ in military type issues, violations of the UCMJ. It in no way impacts a reservist's involvement in a nonmilitary, civil or criminal case. Is that correct? If a service member receives a citation for driving under the influence (DUI) on an off day, this is not involved in any way. This is handled as it would be for any other person. Is that correct?

Dana Grigg:

There are a few civil or criminal convictions that are reserved as first jurisdiction to our local police departments and district attorneys. Citations for driving under the influence are unique in the sense that they do not fall under that jurisdiction; however, we do allow them to be adjudicated through the local district attorney's office. If a member is convicted of DUI, we do not look at the DUI under Article 15. We look at the conviction itself, which usually turns into an administrative disciplinary action. There are two sides in our disciplinary

toolbox. We have the administrative side and the military justice side. Technically, those members could fall under military justice; however, if it is being adjudicated in local courts, it will not, because it is double jeopardy under NRS Chapter 412. I do not want to tell you no or that it depends. However, it most likely will not, because it will be adjudicated by the local court.

Assemblyman Trowbridge:

I could not have picked a worse example. When I was in your position many years ago, the San Antonio Police Department would simply say, "You guys handle it; we do not want to get involved." I do not know if they still do it that way, but that is the way it used to work 40 years ago.

Dana Grigg:

Luckily, it is a little different for the Guard. I am sure there are instances where that happens on active duty bases, but we are such a unique creature, especially for the state of Nevada. We have the first jurisdictional reserve to the local authorities, and that helps us a lot. We are citizen soldiers, so a lot of us work for that police department. That is unlikely to happen on our guard bases. We will more likely allow the civilian courts to go through that process, and then determine from the Guard's standpoint how that affects the service member's career. We do not like to mix the two; we try to keep them apples and oranges whenever we can.

Assemblyman Stewart:

I think the key word in this is "before." If a service member is about to be disciplined and does not know what the punishment will be, he can wait for the punishment to occur. Then he will have the option of accepting Article 15 or going to a court-martial. Is that correct?

Scott Katherman:

Within the arena of nonjudicial punishment, active duty service members have the right to choose court-martial until the pass of judgment. At any point during the proceedings in front of the commander, the service member can make that decision.

Assemblyman Stewart:

If this passes, the service member can wait until after the punishment was set and decide whether or not to accept Article 15 or demand a court-martial. Is that correct?

Scott Katherman:

No. Once service members have had the opportunity to present their cases, that is it. At that point, the commander has all of the evidence and can pass

judgment. If the service members have not made the decision to elect for a court-martial before that, they are stuck with the nonjudicial punishment.

Assemblyman Stewart:

Are we still sending full units of the National Guard overseas or has that stopped?

Scott Katherman:

We have a full unit from Las Vegas that will deploy overseas at the end of this year to the beginning of next year.

Assemblyman Stewart:

To where will they deploy?

Scott Katherman:

They will deploy to the Middle East.

Assemblyman Stewart:

You have done a great job under difficult circumstances over the past 10 years. There have been a lot of deployments.

Assemblyman Moore:

As someone with 24 years in the service, I understand this completely. This is a good bill. I am surprised that the active duty UCMJ was not followed to begin with because I see a lot of problems with having not followed this with Title 10, United States Code for active duty. It does seem like a lot of commanders will keep it in their house and the soldiers never have an opportunity to have their side heard, and charges are brought. A lot of the time, by threatening to court-martial, the charges will be dropped because there is not enough evidence to go forward. I see this as a good thing.

Chairman Ellison:

Are there any other questions? [There were none.] I would also like to thank you for your service. I am proud of our military and what they are able to accomplish. Is there anyone wishing to testify in favor of Senate Bill 90? [There was no one.] Does anyone wish to testify in opposition to S.B. 90? [There was no one.] Is anyone wishing to testify as neutral to S.B. 90? [There was no one.] Do you have any closing comments?

Dana Grigg:

I would like to thank you all for your time. We always get great support from both the Senate and the Assembly. Nevada is a very patriotic state.

We appreciate your helping us to continue to move forward and make our National Guard stronger.

Scott Katherman:

I would like to echo Captain Grigg's comments.

Chairman Ellison:

We will close the hearing on Senate Bill 90. Is there anyone here for public comment? [There was no one.] This meeting of the Assembly Committee on Government Affairs is adjourned [at 9:40 a.m.].

RESPECTFULLY SUBMITTED:

Aubrie Bates
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: February 23, 2015

Time of Meeting: 9:09 a.m.

Bill	Exhibit	Witness/ Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 82	C	Chief Jerome Tushbant, Capitol Police Division, Department of Public Safety	Prepared Testimony in Support of S.B. 82
S.B. 90	D	Captain Dana Grigg, Office of the Staff Judge Advocate, Nevada National Guard	Prepared Testimony in Support of S.B. 90