

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

**Eightieth Session  
February 26, 2019**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:32 a.m. on Tuesday, February 26, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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 at [www.leg.state.nv.us/App/NELIS/REL/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Edgar Flores, Chair  
Assemblyman William McCurdy II, Vice Chair  
Assemblyman Alex Assefa  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblyman Richard Carrillo  
Assemblywoman Bea Duran  
Assemblyman John Ellison  
Assemblywoman Michelle Gorelow  
Assemblyman Gregory T. Hafen II  
Assemblywoman Melissa Hardy  
Assemblyman Glen Leavitt  
Assemblywoman Susie Martinez  
Assemblywoman Connie Munk

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATOR PRESENT:**

Assemblywoman Lesley E. Cohen, Assembly District No. 29



**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Asher Killian, Committee Counsel  
Connie Jo Smith, Committee Secretary  
Trinity Thom, Committee Assistant

**OTHERS PRESENT:**

Charles Lehman, Captain, Nevada Army National Guard, Office of the Military  
Tony Yarbrough, representing Veterans of Foreign Wars, Department of Nevada;  
and United Veterans Legislative Council  
Peter Long, Administrator, Division of Human Resource Management, Department of  
Administration

**Chair Flores:**

[Roll was taken. Committee rules and protocol were explained.] We have two items on the agenda. I would like to open the hearing on Assembly Bill 37.

**Assembly Bill 37: Revises provisions governing punishment of certain members of the Nevada National Guard for minor misconduct. (BDR 36-340)**

**Charles Lehman, Captain, Nevada Army National Guard, Office of the Military:**

[Charles Lehman spoke from prepared text ([Exhibit C](#)).] My goal today is to provide background on the Nevada National Guard, discuss the background and context for the provision, and outline why this provision is in the best interest of the state, the Nevada National Guard, and its service members.

The Nevada National Guard supports a dual-headed mission and answers the nation's call for overseas contingency operations, as well as domestic response assistance within the United States for both the federal government and the State of Nevada. Guardsmen can be called at a moment's notice by the Governor of Nevada or activated into federal service as well. Members of the Guard commit to military training one weekend a month and 15 days a year in their respective military occupation and career fields. When we are activated into federal service, guardsmen will often deploy for several months; and up to a year when activated by the State of Nevada. The lengths vary depending on the incident and situation. At the end of fiscal year 2018, the Nevada National Guard included roughly 4,200 uniformed personnel, and that would be roughly 3,100 soldiers and 1,100 airmen.

Assembly Bill 37 amends a section of the *Nevada Revised Statutes* to modify provisions of our military justice code, specifically concerning nonjudicial punishment (NJP). Nonjudicial punishment is a disciplinary process for minor misconduct by service members. The purpose of this modification is to strengthen the Nevada National Guard's efforts to maximize readiness by reducing the number of separations and ensure good order and discipline within the ranks by ensuring minor military misconduct is dealt with appropriately.

During the 2015 Legislative Session, the Office of the Military proposed a change to the law that would provide all service members in the Nevada National Guard the right to turn down nonjudicial punishment and instead have their cases heard at court-martial, which is a criminal jury trial. At the time of the change, the objective was to align the Nevada National Guard more with active duty military, which has a similar provision. Since this change, the Office of the Military has found that the resources to conduct a court-martial are prohibitive and impractical. Nonjudicial punishment is normally reserved for low-level misconduct, and since 2015, it has become apparent that it is not in the best interest of the state to use NJP every time it could be turned down for a resource-prohibitive court-martial. Because of this, NJP has been rendered impractical, in most circumstances because of the potential strain on time, manpower assets, and funding that it would take to conduct a court-martial. This especially rings true when we are dealing with a primarily part-time force. Because of the limit of time a service member is in a duty status, training for the mission has to be the focus. Therefore, as a result of the previous change, commanders have often been forced to simply separate service members, which is an administrative remedy, instead of utilizing NJP to discipline and rehabilitate a service member and keep him or her for future service. The only other option for commanders is to do nothing, which hurts good order and discipline. The proposed change will put the law back to about where it was prior to the 2015 amendment. Nonjudicial punishment under NRS Chapter 412 previously had, and will continue to have, significant due process already built into it. Specifically, the service member has the following rights:

- A copy of charges against him or her;
- A reasonable decision period to consult with counsel—in Nevada that is at least 30 days;
- The right to remain silent;
- The right to request an open or closed hearing;
- The right to request a spokesperson at said hearing;
- The right to examine available evidence against him or her;
- The right to present evidence and call witnesses at a nonadversarial proceeding;
- The right to appeal to a higher commander.

Additionally, prior to notifying a service member of potential NJP, a preliminary inquiry investigation will be conducted. The proposed change also includes an additional protection of requiring a legal review by a licensed Nevada National Guard attorney to ensure that proper evidentiary standards have been met prior to NJP notification to the service member.

Contrary to active duty NJP, the constraint of liberty for a service member is not a potential consequence of NJP under Nevada law. Active duty NJP has a potential punishment affecting a service member's liberty, including incarceration of up to 30 days and/or restriction to a particular place. These additional and potential restraints of liberty on an active service member are what justifies the additional protection of having the right to turn it down for a court-martial or criminal jury trial. However, these liberty restrictions are not permitted under current NRS Chapter 412 when considering NJP.

In conclusion, A.B. 37 will better facilitate good order and discipline in the Nevada National Guard while providing the ability to retain service members in a rehabilitative manner. It is in the best interest of the state to adopt this bill into law and preserve state resources, along with the valuable state service members. Thank you for your consideration of this bill and your support of the state's military.

**Chair Flores:**

Thank you for your presentation. We have a few questions.

**Assemblyman Ellison:**

Is this not in line with the regular Army and how the protocol is now? You are following right along from the National Guard to what the Army does. Is that not correct?

**Charles Lehman:**

Yes, sir. Currently, this is how the active duty handles things. This is in regulation, not necessarily in law. It provides them the ability to turn down a court-martial. They have command and control over their service members 365 days a year, 7 days a week. They also have more resources than we do, including military judges, lots of attorneys, the ability to have people sit on panels, the equivalent of a jury. For us, we have people for one weekend a month, two weeks a year. For us to do that, which includes preliminary hearings, panel selection, bringing people in to prep for a trial, right now we have three full-time attorneys. We would have to bring in a bunch of people on orders for multiple days to get this even prepped. We would have to bring in a military judge from another state, potentially, to come in and do this. This is primarily used for minor misconduct. This would be using a lot of resources for someone that maybe shows up late to training four times or is absent without leave from training a few times. The consequences for a court-martial are also a lot more significant. Incarceration is always on the table, whereas here it is not.

**Assemblyman Leavitt:**

If a person goes through the judicial process and is convicted of whatever incident has occurred, do they then go through the court-martial proceeding after that?

**Charles Lehman:**

If it went through the civilian criminal system, we would be prohibited from taking it to court-martial. It is almost like a double jeopardy situation. Are you talking about going through the civilian, or just the nonjudicial process here? Would they then be facing a court-martial as well? No, it is either/or. You can only be brought for nonjudicial punishment or a court-martial.

**Assemblyman Leavitt:**

Is this for potential crimes that are not military in relation? It seems like if it is a crime that is military in relation, you would think it would go through the normal judicial process. Then the military has to make a determination as to what their status is.

**Charles Lehman:**

We have administrative ability to do something, so that is outside of the nonjudicial role. If someone received a criminal conviction, say driving under the influence or something more severe than that in the civilian world, we could take administrative action. This is primarily for military offenses that would fall under NRS Chapter 412. I think the punitive provisions are in Chapter 412, and it lays them out. The majority of them are military-specific conduct.

**Assemblywoman Duran:**

Is there a level of progressive discipline for each offense, and are they outlined somewhere for the military personnel to observe?

**Charles Lehman:**

There is not a set progressive disciplinary that you would see, for example, in a state employment-type arena or even in federal employment. There is a level of discipline that could be taken from an admonishment or reprimand up through reduction of a grade in terms of rank or extra duty, something along those lines. Those are outlined also in NRS 412.288 which lays out the potential adverse action that could be taken. But, no, there is not a set of progressive discipline as you would see in state employment.

**Assemblywoman Duran:**

I see here that if it is past three years, you cannot go back and utilize those previous charges against that person, correct?

**Charles Lehman:**

That is correct. To follow up on your progressive discipline, the appellate process that is built into place specifically addresses not so much the substance but the punishment. If it is too severe, that is what kicks in the appellate review. This person would, as I said, have counsel. They have the ability to appeal to a higher authority if they believe that the punishment is too severe.

**Chair Flores:**

Committee members, are there any additional questions? [There were none.] Is there anyone wishing to speak in support, either in Las Vegas or Carson City?

**Tony Yarbrough, representing Veterans of Foreign Wars, Department of Nevada; and  
United Veterans Legislative Council:**

I represent nearly 9,000 members of the Veterans of Foreign Wars of the Department of Nevada. I also represent close to one-half million members of the United Veterans Legislative Council as the chairman. The United Veterans Legislative Council is an organization of the veterans organizations throughout the state of Nevada. That includes all veterans, active duty military, National Guard, families and advocates, those seated behind me of course, and some who may be in Las Vegas.

I am sure many of you have veterans in your family history and may have some direct experience of active duty military service as well. As we move forward, please remember

the families' sacrifices and the commitments to serve our country and how proudly you support them.

I will get started with this and give you some insight. A lot of people do not always grasp what nonjudicial punishment means. You can probably paint a mental picture in your mind of a few GIs hunkering over this big old tub of potatoes and peeling potatoes for hours and hours and hours. That is nonjudicial punishment, if you will. That puts a mental picture in your mind.

The second thing that is important to note in what this bill addresses is what we refer to as minor types of infractions. First of all, after reviewing this bill and talking to some of the authors and investigating this on my own, I have come to realize that the reality is that when they first passed Senate Bill 90 of the 78th Session in 2015, there appeared to be some flavor there that there was something that they were missing on behalf of the soldier that needed to be done. Since they have now had an opportunity to explore that, they found they have had zero violations that would cause that to take place.

Here are some other things important to note: since there have been no courts-martial, the second thing is there really is not any funding to do what that particular bill was asking to be done. There were not enough people to conduct that kind of court-martial. We are talking about people who are weekend warriors. Where is the due process for a weekend court-martial or a weekend hearing or a weekend convening? Those kinds of things do not make good sense. I think this bill is correcting that, and that is something we need to do. If there was anything beyond a minor offense, it is going to be taken to a civilian court anyway. This fixes something they were trying to do in the past. Overall, we think the intent is to provide the best opportunity for corrective action by the commanding officer to maintain good order and discipline, especially since there have been no serious violations that would require a court-martial.

Lastly, the simplest thing I would say is, I think this is the right thing to do. I think this is an appropriate proceeding, and I think this is the correct action that needs to be taken.

**Chair Flores:**

Is there anyone else wishing to speak in support of A.B. 37? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone wishing to speak in the neutral position? [There was no one.] Would you like to make closing remarks?

**Charles Lehman:**

Perhaps I could provide a little more context for you. Since the modification in 2015, there has been one nonjudicial punishment action taken on the Army's side and zero taken on the Air Guard side. There have been zero courts-martial. In the Army Guard alone last year, we had 42 administrative separations, which means they are no longer in the military. Instead of taking nonjudicial punishment, of those 42 service members, some people probably would have been separated, but some of those people may have been able to be disciplined, rehabilitated, and moved forward. We are not here to steamroll people or anything like that.

We have seen an uptick in separating service members rather than being able to take action, rehabilitate, and keep them for further service.

**Chair Flores:**

I will close the hearing on A.B. 37 and move to Assembly Bill 89.

[Also submitted but not discussed was ([Exhibit D](#)).]

**Assembly Bill 89: Revises provisions governing preferences provided to veterans relating to certain state employment. (BDR 23-162)**

**Assemblywoman Lesley E. Cohen, Assembly District No. 29:**

During the 2017-2018 Interim, I chaired the Legislative Committee on Senior Citizens, Veterans and Adults With Special Needs. I am here to present Assembly Bill 89, which is one of our interim committee recommendations. This measure would make a technical correction to *Nevada Revised Statutes* (NRS) 284.015 to remove the current residency requirement for a veteran to receive additional points on a state application for employment.

Let me give you some background. During the 2017 Session, the Legislature approved Assembly Bill 309 of the 79th Session relating to state employment of veterans and certain family members. The measure provided additional preference points to any open, competitive examination in the classified state service by:

1. Increasing to ten the number of points to be added to the passing grade of a veteran who does not have a disability; and
2. The addition of ten points to the passing grade of a widow or widower of a person killed in the line of duty while on active duty in the Armed Forces of the United States.

I will now abbreviate to widows and widowers. Unfortunately, the way the term veteran was defined in the measure limited the program to only those veterans who are residents of Nevada, whereas both in-state and out-of-state widows and widowers would receive the additional points. This is important because A.B. 89 amends subsection 7 of NRS 284.015 to remove the requirement that the meaning ascribed to veterans includes being a resident of Nevada. This change would make the provision consistent between veterans and the widows and widowers. This was the intent of A.B. 309 of the 79th Session as approved by the 2017 Legislature.

The change in the definition would not affect Nevada's statutory definition of veterans in general as set forth in NRS 417.005, which would still require the residency. Instead, it would, in effect, make an exception here by removing the requirement that a veteran be a resident to receive the advantage of preference points in state hiring. With A.B. 309 of the 79th Session, this body made it clear that it is beneficial for our state to encourage veterans to become employees of the state. It is also beneficial not only for the state but for the veterans as well. What we are asking now encourages veterans to move to Nevada and become state

employees, as we are already encouraging the widows and widowers to become state employees.

In the audience we have Peter Long, Administrator of the Division of Human Resource Management within the Department of Administration. Mr. Long is available to answer questions, including the impact of the legislation on his agency. It is my understanding there will be no fiscal impact to this measure. Amy Garland, Executive Officer with the Nevada State Department of Veterans Services, is also in the audience.

Assembly Bill 309 of the 79th Session included a provision requiring reporting by the Department of Administration to the Director of the Department of Veterans Services regarding veterans and widows and widowers. The Department of Veterans Services has proposed a friendly amendment which will ensure that the reporting requirement as set forth in A.B. 309 of the 79th Session is clear that it will include data regarding whether any of the veterans or widows or widowers are not Nevada residents. I believe the amendment is on the Nevada Electronic Legislative Information System. You can see it is a very minor amendment ([Exhibit E](#)).

With that, I will take any questions.

**Assemblyman Leavitt:**

As I was reading through the language, something jumped out at me in section 1, subsection 7, paragraph (a), subparagraph (1): "Armed Forces of the United States and was accepted for and assigned to active duty in the Armed Forces of the United States." Can you define what active duty means?

**Assemblywoman Cohen:**

I believe that is based on the state definition, which I cannot quote, but I am sure someone in the room can.

**Chair Flores:**

Committee members, are there any additional questions? We will have someone answer that question.

**Peter Long, Administrator, Division of Human Resource Management, Department of Administration:**

I do not want to try and give an exact definition of active duty, but I can tell you how we would interpret that in determining if someone had been a veteran. That is if they had served in any of the armed forces and had anything other than a dishonorable discharge, we would have considered that as active duty.

**Assemblywoman Cohen:**

I have the state's definition of veteran, if you would like that; it is a statutory definition.



**Chair Flores:**

Committee members, are there any additional questions?

**Assemblywoman Bilbray-Axelrod:**

I had the opportunity to serve on that interim committee with you. I am very glad you brought this bill because we were all in support of it.

**Assemblywoman Cohen:**

Thank you for your participation and active work on the committee.

**Chair Flores:**

Would anyone like to speak in support of A.B. 89?

**Tony Yarbrough, representing Veterans of Foreign Wars, Department of Nevada; and  
United Veterans Legislative Council:**

We like this bill because it removes the residency qualification and opens this situation. One thing about the bill that lends a little difficulty for us is under subsection 7, paragraph (a), subparagraph (3) where it says, "Commissioned Corps of the United States Public Health Service or the Commissioned Corps of the National Oceanic and Atmospheric Administration of the United States and served in the capacity of a commissioned officer while on active duty in defense of the United States."

We, as veterans ourselves, do not consider that particular definition to fall within the purview of a veteran. I thanked Assemblywoman Cohen for bringing this bill forward. We have had discussions on this. I have had discussions with the director of the Nevada Department of Veterans Services, and we have examined this enough so that if not this session, in the next session we will be examining the depth of the definition of a veteran.

**Chair Flores:**

Is there anyone else wishing to speak in support? [There was no one.] Is there anyone wishing to speak in opposition? [There was no one.] Is there anyone wishing to speak in the neutral position?

**Peter Long:**

The division is neutral on this bill. I just wanted to point out as Assemblywoman Cohen said, there will be no fiscal impact to the Division of Human Resource Management, and that in addition to what she stated as far as points for veterans, in A.B. 309 of the 79th Session, there was a provision inserted which required all job-qualified disabled veterans to be granted an interview for the position, and also veterans amounting to 22 percent of applicants to get an interview for a job. This would allow veterans from out of state to exercise that privilege, and we think that would be a positive for recruiting to the state, particularly for difficult-to-fill positions.

**Chair Flores:**

Is there anyone else wishing to speak in the neutral position? [There was no one.]  
Assemblywoman Cohen, would you like to share any closing remarks?

**Assemblywoman Cohen:**

I urge your support of this legislation. Again, it just provides a technical correction that all veterans both in and out of state will be eligible to receive additional preference points to any open, competitive examination in the classified services for the state.

**Chair Flores:**

I will close the hearing and open it for public comment. [There was none.]

The meeting is adjourned [at 9:02 a.m.].

RESPECTFULLY SUBMITTED:

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Connie Jo Smith  
Committee Secretary

APPROVED BY:

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Assemblyman Edgar Flores, Chair

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is written testimony presented by Charles Lehman, Captain, Office of the Military, in support of Assembly Bill 37.

[Exhibit D](#) is a copy of a letter dated February 5, 2019, submitted by William R. Burks, Brigadier General, United States Air Force, The Adjutant General, State of Nevada Office of the Military, in support of Assembly Bill 37.

[Exhibit E](#) is a copy of a proposed amendment to Assembly Bill 89, dated February 25, 2019, authored by the Nevada Department of Veteran Services, and submitted by Assemblywoman Lesley E. Cohen, Assembly District No. 29.