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**Testimony of Michelle Lenihan, Deputy Commissioner, Department of Defense,
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**BEFORE THE JOINT STANDING COMMITTEE ON VETERANS AND LEGAL
AFFAIRS**

February 5, 2025

**L.D. 57, "An Act to Enable Maine National Guard Commanders to More Efficiently
Effect Disciplinary Measures Through the Maine Code of Military Justice"**

Senator Hickman, Representative Supica, and distinguished members of the Joint Standing Committee on Veterans and Legal Affairs. I am Michelle Lenihan, the new Deputy Commissioner for the Department of Defense, Veterans, and Emergency Management. I'm pleased to be with you today to testify in support of L.D. 57, "An Act to Enable Maine National Guard Commanders to More Efficiently Effect Disciplinary Measures Through the Maine Code of Military Justice."

Our intent in proposing this legislation is to improve our commanders' ability to effectively and efficiently administer military justice to help ensure operational excellence in an environment where our service members can thrive. This legislation will enhance our ability, for example, to address instances such as sexual assault, sexual harassment, and impaired driving in a more expedient manner than in the past.

In order to improve our commanders' ability to administer military discipline proceedings under Maine Law, L.D. 57 proposes the following amendments to the existing Maine Code of Military Justice (MCMJ):

- Section 6 seeks to broaden MCMJ jurisdiction so that commanders can administer military justice for incidents that occurred while in federal status (Title 10) once the soldier or airmen has returned to state status (Title 32). For example, a servicemember commits an act of misconduct while on a training mission to Gagetown, New Brunswick, Canada but it is reported once they are back in Maine. Currently, Maine National Guard (MENG) commanders do not have jurisdiction to address the issue. Enacting section 6 would help remedy this gap by enabling MENG commanders to initiate non-judicial punishment for that offense. We would request a technical amendment to strike section 4, as we no longer believe that it is necessary to meet our intent.

- Section 5 seeks to permit the Adjutant General (TAG) to adopt rules to terminate an officer from the MENG for misconduct. Currently, the MENG must go through a process under the authority of Active-Duty commanders outside the state of Maine, which removes the MENG from much of the decision process and can be slow. L.D. 57 would allow the TAG to run a process within Maine, consistent with Article 1, section 8 of the U.S. Constitution, to adjudicate terminations due to misconduct. Vermont and West Virginia currently run similar state processes. This will give the Adjutant General greater oversight and control over the discipline of officers within the Maine National Guard and eliminate administrative delays.

- Sections 7, 8, and 9 seek to empower commanders below the rank of colonel to handle non-judicial punishment for their subordinate soldiers and airmen, in alignment with the Uniform Code of Military Justice (UCMJ) practice. Currently, the MCMJ requires that colonels conduct nearly all non-judicial punishment actions as they are authorized to reduce a member in rank by one grade for misconduct. This amendment will enable the processing of non-judicial punishment for minor offenses at lower levels of command, thus reducing the administrative burden on senior commanders for minor matters while empowering junior officers more closely in tune with their junior enlisted.

- Section 10 seeks to clarify that conduct which is prejudicial to good order and discipline, or by which its nature is discrediting to the armed forces, is punishable. This amendment would mirror language in the UCMJ that currently is not specifically defined in the MCMJ.

- Section 11 clarifies that commanders may discipline servicemembers for conduct which meets the definition of Operating Under the Influence of Intoxicants and Driving to Endanger as defined under Title 29-A M.R.S.A. This gives commanders a greater ability to effect discipline for dangerous driving behavior.

Additionally, L.D. 57 strives to ensure MENG members have adequate legal representation when facing allegations of misconduct. Currently, MENG has only one traditional (part-time Title 32) Judge Advocate General (JAG) attorney permanently assigned as trial defense counsel.

- Sections 1, 2, and 3 would allow attorneys who hold a JAG certification, but are not admitted to the Maine bar, to represent MENG soldiers and airmen facing non-judicial punishment proceedings. Doing so aims to minimize delays for MENG members facing disciplinary action if a Maine attorney is not available to represent them.

Thank you for your consideration. I look forward to answering any questions that you may have.