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Testimony of Representative Kenneth W. Fredette 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 State Representative Kenneth W. Fredette representing House District 33 which includes the towns of Newport, Corinna, Plymouth, Etna and Dixmont. 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."

First, let me tell you that I currently serve as the State Staff Judge Advocate for the Maine Air National Guard. In that role, one of my core functions is to ensure the Commander's role of making sure there is "good order and discipline" in the Maine Air and Army National Guard. One of the primary ways to accomplish that is through our State Code of Military Justice.

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). The importance of this section is a question of "when can a commander impose punishment" if a Maine Soldier or Airman commits a bad act that is done under the state or federal code.
- Section 5 seeks to permit the Adjutant General (TAG) to adopt rules to terminate an officer from the MENG for misconduct. Again, this allows the process for the Maine Guard Commander to follow our own state process rather than the federal active duty process.

District 33 Dixmont – Etna – Newport – Plymouth - Corinna

- 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. This common sense reform will allow Commanders under the rank of colonel to impose punishment thus streamlining the process.
- 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. Operating Under the Influence is generally not consistent with the standards of the Maine Air or Army Nation Guard.

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. This is a technical change in essence to assure that a JAG is not practicing law without a license in our state.

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