

Testimony for the House Veterans and Military Committee 16 February 2023

Mr. Chairman and Members of the Committee:

My name is Lieutenant Colonel Jacob McElwee, I am a Judge Advocate for the Kansas National Guard. It is my pleasure to speak to you today about our efforts to modernize the Kansas Code of Military Justice (KCMJ) as codified in Chapter 48 of the Kansas Statutes. I truly appreciate this opportunity to testify in support of HB 2392 on behalf of the Adjutant General's Department.

Generally, when National Guard members serve pursuant to federal orders, they are subject to the Uniform Code of Military Justice (UCMJ) under Title 10 of the United States Code which outlines the role of the armed forces of the United States. For most National Guard members, however, they will serve the bulk of their career under the provisions of Title 32 of the United States Code which outlines the role of the National Guard of the United States and otherwise applies during drill weekends and annual training. During service under Title 32, members are bound by Army Regulations and Air Force Instructions, respectively, but are also subject to the Kansas Code of Military Justice (KCMJ) for relevant administrative and disciplinary matters.

Since its enactment in 1951, the UCMJ has undergone several major revisions. Where once the KCMJ and UCMJ coexisted with similar language, the KCMJ has undergone only minor revisions since its enactment in the early 1900s. Consequently, the KCMJ needs updating to serve the current needs of commanders.

These proposed changes include consolidating language from various provisions of Chapter 48 to avoid unnecessary and duplicative language; updating and adding definitions to match those contained in the UCMJ; ensuring overall consistency with the UCMJ and Model State Codes of Military Justice that have been enacted in recent years in our sibling states; removing all references to, and sections concerning, trial by court-martial; updating language to modernize non-judicial punishment proceedings to bring this oft-used disciplinary process in line with other military justice changes; and updating KCMJ punitive articles to mimic current UCMJ punitive articles while continuing to exclude serious felonies, i.e., murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, and burglary, which remain under the purview of civilian courts.

Modernizing the KCMJ ensures that the men and women of the Kansas National Guard are subject to statutes that are consistent with the UCMJ, Army Regulations, and Air Force Instructions, in turn giving commanders the tools they need to properly address disciplinary

matters that arise when members are engaged in service of the United States and the State of Kansas.

Thank you again for the opportunity to speak today.

Respectfully submitted by:

LTC Jacob D Mcelwee
Judge Advocate
16 February 2023