

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS**

March 20, 2014

1:05 p.m.

**MEMBERS PRESENT**

Representative Neal Foster, Co-Chair  
Representative Gabrielle LeDoux, Co-Chair  
Representative Shelley Hughes  
Representative Lora Reinbold  
Representative Dan Saddler  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Pete Higgins

**COMMITTEE CALENDAR**

HOUSE BILL NO. 313

"An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by combat-related post-traumatic stress disorder or combat-related traumatic brain injury."

- MOVED HB 313 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 313

SHORT TITLE: MITIGATING FACTOR: COMBAT-RELATED PTSD

SPONSOR(S): REPRESENTATIVE(S) GARA

02/19/14	(H)	READ THE FIRST TIME - REFERRALS
02/19/14	(H)	MLV, JUD
03/11/14	(H)	MLV AT 1:00 PM CAPITOL 120
03/11/14	(H)	Heard & Held
03/11/14	(H)	MINUTE(MLV)
03/20/14	(H)	MLV AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE LES GARA  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As the sponsor of HB 313, answered questions that were raised at the hearing on 3/11/14, and explained the purpose of a proposed amendment.

QUINLAN STEINER, Director  
Central Office  
Public Defender Agency  
Department of Administration  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 313.

KATHLEEN STRASBAUGH, Attorney  
Legislative Legal Counsel  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 313.

LAURA BROOKS, Health Care Administrator  
Office of the Commissioner - Anchorage  
Department of Corrections  
Anchorage, Alaska

**POSITION STATEMENT:** Answered a question during the hearing on HB 313.

MICHAEL KOCHER  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of HB 313.

#### **ACTION NARRATIVE**

[1:05:35 PM](#)

**CO-CHAIR NEAL FOSTER** called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:05 p.m. Representatives LeDoux, Hughes, Saddler, Reinbold, Gruenberg, and Foster were present at the call to order.

#### **HB 313-MITIGATING FACTOR: COMBAT-RELATED PTSD**

[1:06:03 PM](#)

CO-CHAIR FOSTER announced that the only order of business would be HOUSE BILL NO. 313, "An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court

to have been affected by combat-related post-traumatic stress disorder or combat-related traumatic brain injury."

1:06:36 PM

REPRESENTATIVE LES GARA, Alaska State Legislature, prime sponsor of HB 313, reminded the committee there were questions raised at the first hearing of the bill on 3/11/14, so veterans' groups were contacted for more information. The committee wanted to know if treatment for post-traumatic stress disorder (PTSD) was offered to veterans in jail, and how those suffering from PTSD fare while in jail. The answer to the first question was that the treatment for PTSD is minimal. In answer to the second question, Representative Gara said PTSD is a problem that persists for life and which must be managed to avoid the triggers that cause an event. Incarceration is detrimental to the management of the disorder, because there is no escape from potential triggers, and thus "incarceration is not all that useful." Although the bill does not prevent incarceration, the mitigator [proposed by the bill] is that the court can reduce the sentence for a nonviolent crime and hasten treatment. To a question raised by Representative Gruenberg, he said the bill applies to combat-related PTSD or traumatic brain injury (TBI). Representative Gara said Representative Gruenberg suggested amending the bill to change the identifying term from "combat-related" to "service-related" for the purpose of including those who may witness traumatic events. He invited an attorney from Legislative Legal Services to provide an opinion on this change.

REPRESENTATIVE SADDLER asked whether someone who has been diagnosed with PTSD is always "considered to be suffering from PTSD."

REPRESENTATIVE GARA opined the term would be viewed as pejorative and would be interpreted by the court as "has PTSD, has traumatic brain injury."

1:11:04 PM

CO-CHAIR LEDOUX observed the term "suffering" is commonly associated with an illness.

REPRESENTATIVE SADDLER clarified that his question was: After one has been diagnosed with PTSD, whether the condition can "flare-up."

REPRESENTATIVE GRUENBERG pointed out the proposed amendment is to existing statute, and the terms will be construed the same way as in the same statute. He directed attention to the bill beginning on page 3, paragraph 18, line 15, which read:

defendant committed the offense while suffering from a mental disease or defect as

REPRESENTATIVE GRUENBERG expressed his belief that it would depend upon the facts of the case, but if one were diagnosed, then as a matter of law "probably you're suffering from it."

REPRESENTATIVE GARA agreed that the term used is consistent with existing statute, but said he would accept a better term.

REPRESENTATIVE GRUENBERG said it is important that the term is consistent.

REPRESENTATIVE SADDLER asked how and who would determine that "the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the demands of life was substantially impaired by the PTSD."

[1:14:17 PM](#)

REPRESENTATIVE GARA explained that for mitigators the burden is on the defendant to provide expert testimony, such as from a psychologist or someone with expertise on this topic. Further, the expert would have to testify that active PTSD contributed to the defendant committing the nonviolent crime, which may be countered by the prosecution, thus the judge would have to decide.

REPRESENTATIVE GRUENBERG added that the burden must be proven by clear and convincing evidence, and he suggested that the questions should be directed to an expert witness.

QUINLAN STEINER, Director, Central Office, Public Defender Agency, Department of Administration, advised that the burden of proof is clear and convincing [evidence], and that question would be decided by a judge. Typically, the defense would secure an expert to evaluate the client and their testimony would be presented to the judge.

REPRESENTATIVE SADDLER asked whether PTSD has been used as a mitigator or aggravator related to illegal activity in any Alaska state court.

[1:17:16 PM](#)

MR. STEINER said yes. The question has often been debated in another section of the mitigator statute, and has been applied. Mr. Steiner remarked:

This particular mitigator would make it absolutely clear that it would apply, which is always good because the one - the mental health mitigator - is quite broad and there's a lot of debate that goes into what qualifies, and this would end that debate.

REPRESENTATIVE GRUENBERG asked for clarification on the use of the word "suffering."

MR. STEINER advised the foregoing is not an issue. If one is diagnosed, and one's behavior is affected, it would be applied.

[1:18:43 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt Amendment 1, labeled 28-LS1161\U.1, Strasbaugh, 3/14/14 which read:

Page 1, line 2:

Delete "**combat-related**"

Insert "**military-service-related**"

Page 1, line 3:

Delete "**combat-related**"

Insert "**military-service-related**"

Page 3, line 30, through page 4, line 11:

Delete all material and insert:

"(21) except in the case of an offense defined under AS 11.41 or AS 11.46.400, the defendant committed the offense while suffering from a condition diagnosed as military-service-related post-traumatic stress disorder or military-service-related traumatic brain injury that resulted from active duty in the armed forces of the United States, and the military-service-related post-traumatic stress disorder or military-service-related traumatic brain injury

(A) substantially impaired the defendant's judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; and

(B) though insufficient to constitute a complete defense, significantly affected the defendant's conduct."

CO-CHAIR FOSTER objected for the purpose of discussion.

REPRESENTATIVE GARA explained the bill directed that the mitigator applies in the event of combat-related TBI or PTSD. Representative Gruenberg had suggested to the sponsor that there are instances where a service member would witness such events while not in combat. Service-related is already defined in statute, thus Amendment 1 uses the definition of service-related that is in Alaska statute. He said making the change is up to the committee.

[1:20:06 PM](#)

CO-CHAIR LEDOUX posed the scenario of a service member with an office job in Alaska who was injured in an automobile accident, and asked if that injury would be applicable.

REPRESENTATIVE GARA pointed out that the defendant needs to prove that the injury was military-service-related and was acquired while serving the country; if so, the mitigator would apply.

CO-CHAIR LEDOUX surmised an accident could happen off-base, but while [a service member was] serving in the military.

REPRESENTATIVE GARA said he was unsure, and similar circumstances would probably have to be litigated.

[1:22:31 PM](#)

KATHLEEN STRASBAUGH, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, agreed with Representative Gara that the abovementioned circumstances would be litigated; however, "resulted from active duty" means engaged in some kind of activity related to one's service. She cautioned that one cannot be sure of an outcome in court.

REPRESENTATIVE HUGHES asked for the definition of military-service-related.

MS. STRASBAUGH, for Amendment 1, said she used the generic definition found in the "retirement section" that designates "active duty in the U.S. armed services."

REPRESENTATIVE SADDLER asked whether the sponsor considered extending the protection of the mitigator to those who suffer PTSD from other than military-service-related causes.

REPRESENTATIVE GARA stated that anyone with PTSD should be treated equally; on the other hand, when all defendants - even those who have not served in the military - can claim their actions are affected by PTSD, there will be some who do not tell the truth. He cautioned that the bill has a better chance of passing as it is currently written. The [Section 1, AS 12.55.155(d), paragraph (18)] mitigator is not clear on whether PTSD and TBI are covered, although autism is clearly covered. Representative Gara stressed that the intent of HB 313 is to protect members of the military.

[1:27:14 PM](#)

REPRESENTATIVE GRUENBERG asked Ms. Strasbaugh for the citation of the retirement statutes that she previously referenced.

MS. STRASBAUGH responded AS 14.25.220 and AS 39.35.680.

REPRESENTATIVE REINBOLD noted her concern about "opening the tent too big," and opined the bill as written would be more likely to pass. She asked how many other states have passed similar legislation.

REPRESENTATIVE GARA advised that every state's criminal code is very different, and he was unsure how to find an accurate answer. Moreover, the hope is that "the committee would just decide this based on whether they think it's a good idea and not whether or not other states have done it in their very different criminal law systems." He added that California and Minnesota have similar veteran-specific legislation.

REPRESENTATIVE REINBOLD asked whether the other states use military-service-related or combat-related.

REPRESENTATIVE GARA did not know.

[1:30:28 PM](#)

CO-CHAIR LEDOUX preferred the bill as written. She directed attention to [AS 12.55.155(d), paragraph] 18, and questioned why PTSD would not be considered a mental disease or defect.

REPRESENTATIVE GARA responded to Representative Reinbold's prior question and said in California and Minnesota the legislation applies to service-related and not combat-related. He then advised that [paragraph] 18 in the abovementioned statute covers mental disease or defect, which leads to two problems. First, many veterans with PTSD do not consider their condition a defect or disease, and resist using this defense. Second, PTSD may not be a disease or defect but is an injury, which creates a gray area in law. The bill would erase all doubt thus precluding further litigation.

REPRESENTATIVE GRUENBERG clarified that the term combat-related in the bill may technically depend upon where the person was at the moment of injury. He gave personal examples of military members under stressful conditions albeit outside of a declaration of war.

REPRESENTATIVE HUGHES questioned whether there was a way to add those injured in high-risk, noncombat-related incidents, such as training exercises. She did not support Amendment 1 as written.

[1:36:44 PM](#)

REPRESENTATIVE GRUENBERG observed that veterans have difficulty getting the government to cover and diagnose their conditions because of the expense of medical and psychiatric treatment. The bill would bring a condition to the attention of the court at a sentencing hearing, and the court would make the decision. He warned that moving away from the specific aspect of sentencing defeats the purpose of the bill, and encouraged the committee to be "overinclusive."

REPRESENTATIVE HUGHES directed attention to two background points of interest to her: how many veterans are incarcerated in Alaska, and whether Alaska has veteran's courts.

REPRESENTATIVE GARA answered that he does not have Alaska-specific statistics. Further, the bill only applies in state courts and veteran's courts apply federal statutes.

REPRESENTATIVE HUGHES asked whether the Department of Corrections or the Department of Military & Veterans' Affairs would have intake information on inmates.

REPRESENTATIVE GARA did not know. He pointed out that many who suffer from PTSD are undiagnosed.

[1:40:33 PM](#)

LAURA BROOKS, Health Care Administrator, Office of the Commissioner - Anchorage, Department of Corrections (DOC), informed the committee DOC does ask inmates whether they have veterans' benefits; however, medical information is not electronically tracked thus statistics are not available. If symptoms of PTSD are known and an inmate is willing to be referred to the DOC mental health staff for evaluation, his or her condition could be accounted for, but not the cause of the injury.

REPRESENTATIVE SADDLER confirmed that the State of Alaska does not have a veterans' court, but the Municipality of Anchorage has a diversion program for veterans. He provided the following statistics on PTSD: In America, about 60 percent of men and 50 percent of women experience at least one traumatic event, and of those who do, about 8 percent of men and about 20 percent of women will develop PTSD; for events like combat and sexual assault, a higher percentage develops PTSD.

REPRESENTATIVE REINBOLD reminded the committee of the burden of federal debt and a potential cost to the military; on the other hand, Amendment 1 may decrease prison costs. She expressed concern about a military member who may suffer PTSD after a sexual assault.

[1:43:55 PM](#)

CO-CHAIR LEDOUX asked Representative Reinbold what the proposed legislation would cost the military.

REPRESENTATIVE REINBOLD deferred to experts in military and veterans' affairs.

REPRESENTATIVE GARA said the bill applies after a veteran is convicted of a crime. At the time of sentencing, the defendant would need to prove that his or her PTSD was caused by combat or military service by providing testimony from an expert, who would be paid for by the public defender (PD). He surmised that the expert may be from the Department of Veterans' Affairs (VA), Veterans' Benefits Administration, and if the PD is not charged for the testimony, there would be a small cost to VA.

CO-CHAIR LEDOUX stated that the bill would not mandate that VA provides expert testimony.

REPRESENTATIVE GARA said correct.

[1:46:45 PM](#)

REPRESENTATIVE SADDLER shared his concern about the effect of Amendment 1. Restricting mitigation to combat-related [PTSD] preserves the intent of HB 313.

REPRESENTATIVE GARA pointed out that in Amendment 1 the definition of service-related pertains to active duty.

[1:48:23 PM](#)

CO-CHAIR FOSTER removed his objection to Amendment 1.

[1:49:00 PM](#)

The committee took a brief at-ease.

[1:49:39 PM](#)

CO-CHAIR FOSTER maintained his objection to Amendment 1.

REPRESENTATIVE GRUENBERG restated his intent in offering Amendment 1, and asked whether anyone who had acquired PTSD while on active duty, but that was not combat-related, wished to testify on this topic.

[1:50:52 PM](#)

REPRESENTATIVE SADDLER raised a point of order.

[1:51:22 PM](#)

The committee took an at-ease from 1:51 p.m. to 1:52 p.m.

[1:52:19 PM](#)

REPRESENTATIVE GRUENBERG withdrew the motion to adopt Amendment 1. There being no objection, it was so ordered.

[1:53:31 PM](#)

CO-CHAIR FOSTER reopened public testimony on HB 313.

[1:53:45 PM](#)

MICHAEL KOCHER said he was an Alaskan and a U.S. Marine Corps veteran from Eagle River. He supported expanding the bill to cover noncombat military service member victims of sexual assault because they suffer PTSD rates that are higher than those who have seen direct combat. According to VA, if a service member were deployed to areas that are considered combat zones that would be a combat deployment, even if he or she never left the base. Mr. Kocher expressed his personal belief that HB 313 is a good idea and he said he supports the legislation.

REPRESENTATIVE SADDLER appreciated Mr. Kocher's clarification.

REPRESENTATIVE GARA opined Mr. Kocher's testimony complies with the intent of HB 313.

REPRESENTATIVE REINBOLD suggested that the House Judiciary Standing Committee (HJUD) should determine whether sexual assault cases are included or excluded.

REPRESENTATIVE GRUENBERG, in view of the large number of sexual assault cases forthcoming, offered to restate his motion to adopt Amendment 1 in order to declare the committee's intent that sexual assault cases would be covered by the bill.

REPRESENTATIVE SADDLER said he would oppose the amendment.

[1:58:58 PM](#)

REPRESENTATIVE HUGHES said she would not object to HJUD looking at instances of injuries as a result of sexual assault and of combat training exercises.

CO-CHAIR FOSTER agreed.

CO-CHAIR LEDOUX suggested there is a need for a mitigator in legislation for all victims of sexual assault.

[2:00:29 PM](#)

CO-CHAIR FOSTER, after ascertaining no one else wished to testify, closed public testimony on HB 313.

REPRESENTATIVE GRUENBERG said the comments regarding the bill are helpful.

REPRESENTATIVE SADDLER said the proposed legislation will provide a way to allow for veterans who return home with hidden scars.

[2:01:25 PM](#)

CO-CHAIR LEDOUX moved to report HB 313 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 313 was reported out of the House Special Committee on Military and Veterans' Affairs.

[2:01:47 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:01 p.m.