



STATE OF CONNECTICUT

MILITARY DEPARTMENT
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HARTFORD, CONNECTICUT 06105-3795

February 17, 2015

Honorable Mae Flexer, State Senator
Honorable John "Jack" F. Hennessy, State Representative
Co-Chairs, Veterans' Affairs Committee
Hartford, CT 06106

IN RE Proposed Bills:

SB 521, "AAC Flying Flags at Half-Staff"

SB 693, "AAC Prosecution of Military Sexual Assault Charges"

HB 6372, "AAC Tuition Waivers for Members of the Armed Forces"

HB 6502, "AA Increasing the Retirement Age for the Governor's Horse Guards"

HB 6506, "AAC The Military Department"

HB 6713, "AA Increasing the Retirement Age for the Horse Guard Commandants"

I write to express the Military Department's opposition to the above-noted bills. These bills are well intended but do not lend themselves to efficient state military operations.

S.B. 521 provides for a state statute requiring the national flag to be flown at half-staff at all state and municipal buildings on June 6th and annually thereafter in honor of the D-Day invasion. To be sure, the sacrifices of our servicemembers and of our nation in regard to the D-Day invasion warrants honor. The honor, however, of displaying the national flag at half-staff should, indeed must, comport with federal law concerning the display of the flag (enclosed). I ask the members of this committee to heed the United States Code's provisions concerning the display of the United States flag, especially 4 U.S.C, 7(m), promulgating how and when the U.S. flag should be displayed at half-staff. I ask the committee to honor the National Flag Code and not support joint-favorable action on this bill or to substitute language that complies with the National Flag Code.

SB 693 addresses an issue that has come under close scrutiny by our federal government. The armed forces have taken action to ensure sexual assault is not tolerated in our ranks and if and when perpetrated dealt with appropriately at every level. This bill, however, proposes legislation that is already enacted in our state law. The Connecticut General Statutes, Section 27-260 (enclosed), accomplishes the intent of his bill, "that local civilian authorities' claims to prosecutorial jurisdiction are senior to jurisdiction claims of the Military Department." Section 27-260 specifies that the Military Department has no prosecutorial jurisdiction to the crime of sexual assault.

HB 6372 proposes the state extend tuition waivers to members of the armed forces currently serving on active duty in Connecticut. The intent is admirable. However, under the Federal Tuition Assistance Program, tuition for active duty members is paid for by the federal government. The expense is not borne by the service member. I would ask the members of the committee to consider the FTA revenue to the state before extending tuition waivers.

HB 6502 and **HB 6506** propose raising the retirement age for members or the commandant of the Governor's Horse Guard. Members of the Governor's Horse Guard are members of the state armed forces (militia). Statutes prudently provide for retirement at age 64, which is aligned with federal retirement for members of the U.S. armed forces. The duties of members and the structure of the armed forces require an age limitation. This is not an issue of age discrimination, but an issue of life and safety, for all concerned. I ask the committee members to retain the retirement age for all members of the Horse Guard, including the commandants, at age 64. Please refer to the enclosed information paper.

HB 6713 proposes the sharing of information between the Military Department and the Department of Labor. This legislation is not necessary. The Military Department currently shares information freely with sister state agencies and related federal agencies. The sharing of information is done as a matter of government interaction and does not require a specific statute. Under the state and federal laws, including the freedom of information act, the Military Department readily shares information with individual citizens and with other requesting entities, including governmental agencies. There is no need to have a specific law to direct the Military Department to share information with the Department of Labor or with any other agency.

On behalf of Connecticut's nearly 5,000 citizen soldiers and airmen, the members of our states armed forces, their families and our veterans, I ask the Veterans' Affairs Committee to take no favorable action on these bills and to work for the passage of laws that provide meaningful opportunities and protections for our service members and veterans. Should you desire to discuss these matters or others concerning military/veteran legislation and legislation for the efficient operation of the Connecticut Military Department, please contact my legislative liaison, Lieutenant Colonel Timothy J. Tomcho, Judge Advocate, at (860) 548-3203 or via email at timothy.j.tomcho.mil@mail.mil.

Sincerely,


THADDEUS J. MARTIN
Major General
The Adjutant General

Enclosures:

1. 4 USC 7m
2. C.G.S. 27-260
3. Militia Retirement Age at 64

Copy Furnished:
Governor's Office

TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES

CHAPTER 1 - THE FLAG

§ 7. Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

(a) The flag should not be displayed on a float in a parade except from a staff, or as provided in subsection (i) of this section.

(b) The flag should not be draped over the hood, top, sides, or back of a vehicle or of a railroad train or a boat. When the flag is displayed on a motorcar, the staff shall be fixed firmly to the chassis or clamped to the right fender.

(c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. No person shall display the flag of the United Nations or any other national or international flag equal, above, or in a position of superior prominence or honor to, or in place of, the flag of the United States at any place within the United States or any Territory or possession thereof: Provided, That nothing in this section shall make unlawful the continuance of the practice heretofore followed of displaying the flag of the United Nations in a position of superior prominence or honor, and other national flags in positions of equal prominence or honor, with that of the flag of the United States at the headquarters of the United Nations.

(d) The flag of the United States of America, when it is displayed with another flag against a wall from crossed staffs, should be on the right, the flag's own right, and its staff should be in front of the staff of the other flag.

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.

(g) When flags of two or more nations are displayed, they are to be flown from separate staffs of the same height. The flags should be of approximately equal size. International usage forbids the display of the flag of one nation above that of another nation in time of peace.

(h) When the flag of the United States is displayed from a staff projecting horizontally or at an angle from the window sill, balcony, or front of a building, the union of the flag should be placed at the peak of the staff unless the flag is at half-staff. When the flag is suspended over a sidewalk from a rope extending from a house to a pole at the edge of the sidewalk, the flag should be hoisted out, union first, from the building.

(i) When displayed either horizontally or vertically against a wall, the union should be uppermost and to the flag's own right, that is, to the observer's left. When displayed in a window, the flag should be displayed in the same way, with the union or blue field to the left of the observer in the street.

(j) When the flag is displayed over the middle of the street, it should be suspended vertically with the union to the north in an east and west street or to the east in a north and south street.

(k) When used on a speaker's platform, the flag, if displayed flat, should be displayed above and behind the speaker. When displayed from a staff in a church or public auditorium, the flag of the United States of America should hold the position of superior prominence, in advance of the audience, and in the position of honor at the clergyman's or speaker's right as he faces the audience. Any other flag so displayed should be placed on the left of the clergyman or speaker or to the right of the audience.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(l) The flag should form a distinctive feature of the ceremony of unveiling a statue or monument, but it should never be used as the covering for the statue or monument.

(m) The flag, when flown at half-staff, should be first hoisted to the peak for an instant and then lowered to the half-staff position. The flag should be again raised to the peak before it is lowered for the day. On Memorial Day the flag should be displayed at half-staff until noon only, then raised to the top of the staff. By order of the President, the flag shall be flown at half-staff upon the death of principal figures of the United States Government and the Governor of a State, territory, or possession, as a mark of respect to their memory. In the event of the death of other officials or foreign dignitaries, the flag is to be displayed at half-staff according to Presidential instructions or orders, or in accordance with recognized customs or practices not inconsistent with law. In the event of the death of a present or former official of the government of any State, territory, or possession of the United States or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty, the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation. The flag shall be flown at half-staff 30 days from the death of the President or a former President; 10 days from the day of death of the Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives; from the day of death until interment of an Associate Justice of the Supreme Court, a Secretary of an executive or military department, a former Vice President, or the Governor of a State, territory, or possession; and on the day of death and the following day for a Member of Congress. The flag shall be flown at half-staff on Peace Officers Memorial Day, unless that day is also Armed Forces Day. As used in this subsection—

(1) the term “half-staff” means the position of the flag when it is one-half the distance between the top and bottom of the staff;

(2) the term “executive or military department” means any agency listed under sections 101 and 102 of title 5, United States Code; and

(3) the term “Member of Congress” means a Senator, a Representative, a Delegate, or the Resident Commissioner from Puerto Rico.

(n) When the flag is used to cover a casket, it should be so placed that the union is at the head and over the left shoulder. The flag should not be lowered into the grave or allowed to touch the ground.

(o) When the flag is suspended across a corridor or lobby in a building with only one main entrance, it should be suspended vertically with the union of the flag to the observer’s left upon entering. If the building has more than one main entrance, the flag should be suspended vertically near the center of the corridor or lobby with the union to the north, when entrances are to the east and west or to the east when entrances are to the north and south. If there are entrances in more than two directions, the union should be to the east.

(Added Pub. L. 105–225, § 2(a), Aug. 12, 1998, 112 Stat. 1495; amended Pub. L. 110–41, § 3, June 29, 2007, 121 Stat. 233.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
7	36:175.	June 22, 1942, ch. 435, § 3, 56 Stat. 378; Dec. 22, 1942, ch. 806, § 3, 56 Stat. 1075; July 9, 1953, ch. 183.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Revised Section

Source (U.S. Code)

Source (Statutes at Large)

67 Stat. 142; July 7, 1976, Pub. L.
94-344, (6)-(11), 90 Stat. 811; Sept.
13, 1994, Pub. L. 103-322, title
XXXII, § 320922(b), 108 Stat. 2131.

Amendments

2007—Subsec. (m). Pub. L. 110-41, in sixth sentence, inserted “or the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty” after “present or former official of the government of any State, territory, or possession of the United States” and substituted “, and the same authority is provided to the Mayor of the District of Columbia with respect to present or former officials of the District of Columbia and members of the Armed Forces from the District of Columbia. When the Governor of a State, territory, or possession, or the Mayor of the District of Columbia, issues a proclamation under the preceding sentence that the National flag be flown at half-staff in that State, territory, or possession or in the District of Columbia because of the death of a member of the Armed Forces, the National flag flown at any Federal installation or facility in the area covered by that proclamation shall be flown at half-staff consistent with that proclamation.” for period at end.

Finding

Pub. L. 110-41, § 2, June 29, 2007, 121 Stat. 233, provided that: “Congress finds that members of the Armed Forces of the United States defend the freedom and security of the United States.”

Proc. No. 3044. Display of Flag at Half-Staff Upon Death of Certain Officials and Former Officials

Proc. No. 3044, Mar. 1, 1954, 19 F.R. 1235, as amended by Proc. No. 3948, Dec. 12, 1969, 34 F.R. 19699, provided:

WHEREAS it is appropriate that the flag of the United States of America be flown at half-staff on Federal buildings, grounds, and facilities upon the death of principal officials and former officials of the Government of the United States and the Governors of the States, Territories, and possessions of the United States as a mark of respect to their memory; and

WHEREAS it is desirable that rules be prescribed for the uniform observance of this mark of respect by all executive departments and agencies of the Government, and as a guide to the people of the Nation generally on such occasions:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America and Commander in Chief of the armed forces of the United States, do hereby prescribe and proclaim the following rules with respect to the display of the flag of the United States of America at half-staff upon the death of the officials hereinafter designated:

1. The flag of the United States shall be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions for the period indicated upon the death of any of the following-designated officials or former officials of the United States:

(a) The President or a former President: for thirty days from the day of death.

The flag shall also be flown at half-staff for such period at all United States embassies, legations, and other facilities abroad, including all military facilities and naval vessels and stations.

(b) The Vice President, the Chief Justice or a retired Chief Justice of the United States, or the Speaker of the House of Representatives: for ten days from the day of death.

(c) An Associate Justice of the Supreme Court, a member of the Cabinet, a former Vice President, the President pro tempore of the Senate, the Majority Leader of the Senate, the Minority Leader of the Senate, the Majority Leader of the House of Representatives, or the Minority Leader of the House of Representatives: from the day of death until interment.

2. The flag of the United States shall be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the metropolitan area of the District of Columbia on the day of death and on the following day upon the death of a United States Senator, Representative, Territorial Delegate, or the Resident Commissioner from the Commonwealth of Puerto Rico, and it shall also be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the State, Congressional District, Territory, or Commonwealth of such Senator, Representative, Delegate, or Commissioner, respectively, from the day of death until interment.

3. The flag of the United States shall be flown at half-staff on all buildings and grounds of the Federal Government in a State, Territory, or possession of the United States upon the death of the Governor of such State, Territory, or possession from the day of death until interment.

MILITARY DEPARTMENT
Information Paper
Retain the Militia Retirement Age at 64

I. Age restriction rationally related to the occupational qualifications of service in armed forces.

- Age restriction due to rigors of service in armed forces, including marching, horse riding, field encampments and long hours.
- Age restriction is based on safety concerns -- designed to minimize LOD injuries, deaths and associated medical liabilities.
- Age restriction designed to facilitate youth and vigor within force -- military duties are physically strenuous.
- Age restriction provides for upward mobility of junior members.

II. Carving out exception for members of the horse guard is not prudent or rationally related to government interest.

- Exception for horse guard carves out distinction for one element of state armed forces.
- Exception is not based on the needs of the armed forces.
- Federal ADEA does not apply to federal or state armed forces.
- State ADEA does not apply to state armed forces.
- Neither apply to volunteers.

III. Age limitation of 64 is reasonable.

- If extending the age from age 64 to age 70, why stop at age 70? Why apply any age restriction at all?
- Unit bylaws permit limited continued service (e.g., life/veteran member).
- State statute permits recall of retired members if need arises.
- Federal military retirement age (e.g. National Guard) is 60 - 64 years of age.

27-260 Section text
1 of 1 document(s) retrieved

Sec. 27-260. Crimes excepted from court-martial jurisdiction. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, sexual assault, sexual assault with a firearm, robbery, arson, coercion, assault in the first or second degree or burglary, jurisdiction of which is reserved to civil courts.

ENCL 2

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

4. In the event of the death of other officials, former officials, or foreign dignitaries, the flag of the United States shall be displayed at half-staff in accordance with such orders or instructions as may be issued by or at the direction of the President, or in accordance with recognized customs or practices not inconsistent with law.

5. The heads of the several departments and agencies of the Government may direct that the flag of the United States be flown at half-staff on buildings, grounds, or naval vessels under their jurisdiction on occasions other than those specified herein which they consider proper, and that suitable military honors be rendered as appropriate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 1st day of March in the year of our Lord nineteen hundred and fifty-four, and of the Independence of the United States of America the one hundred and seventy-eighth.

[seal]

Dwight D. Eisenhower.