

STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Department of Veterans Affairs (VA) on two bills:

- H.R. 2040, a bill to deny burial in Federally funded cemeteries to persons convicted of certain capital crimes; and
- S. 923, a bill to deny veterans' benefits to persons convicted of Federal capital offenses.

S. 923, passed by the Senate on June 18, 1997, would render any person who is convicted of a Federal capital offense ineligible for all benefits provided under title 38, United States Code, including burial in the National Cemetery System. Dependents and survivors of an individual convicted of a Federal capital offense would lose benefits to the extent their eligibility would be based on the eligibility of the convicted individual.

H.R. 2040, which you and others on this Committee introduced on June 25, 1997, would render ineligible for burial in a Federally funded cemetery persons convicted of certain crimes. In order to be rendered ineligible, a person must have been convicted of both murder of a Federal employee while the employee was performing official duties, and one of several listed offenses involving terrorism, use of a weapon of mass destruction, or destruction of Federal property by fire or explosion. The bill would also render ineligible those persons administratively found, by clear and convincing evidence, to have committed crimes of the type specified, but who were not brought to trial for those crimes because of death, flight, or insanity. Dependents and survivors would not lose benefits based on the veterans' disqualification.

Both bills under consideration today raise the issue of the propriety of imposing forfeiture of benefits based upon the post-discharge conduct of veterans discharged honorably from military service. In the past, it has generally been recognized that veterans' benefits are provided on the basis of faithful military service and are not contingent on post-discharge conduct.

We do recognize, however, that, under certain limited circumstances, veterans' benefits may be forfeited based on conduct after service. Section 6105 of title 38, United States Code, provides for forfeiture of gratuitous benefits under laws administered by VA for any person convicted of certain crimes, including treason, sabotage, spying, and subversive activities. This forfeiture provision specifically applies to the right to burial in a national cemetery.

In addition, section 6103(a) of title 38 provides that persons who make a false or fraudulent claim before VA may forfeit all gratuitous benefits under laws we administer, and section 6104 provides for the forfeiture of gratuitous veterans' benefits based on an administrative determination

that an individual is guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States. Since September 1, 1959, however, the law has limited application of these two sections to persons who were not residents of or domiciled in the United States at the time of the events in question.

Should the Committee decide to report out legislation limiting veterans' benefits based on the commission of Federal capital crimes, VA's preference would be for the more narrowly focused provisions of H.R. 2040. We believe H.R. 2040 would adequately address concerns regarding the preservation of the sanctity of veterans cemeteries, while having a more limited impact on veterans' families. H.R. 2040 applies only to persons who have committed certain crimes which result in the death of a Federal employee. It would prevent the interment of the remains of perpetrators of such crimes in the National Cemetery System, Arlington National Cemetery, and many state veterans' cemeteries.

We also caution that the bills in question, if enacted as drafted, could give rise to a number of anomalous situations. For example, H.R. 2040 would require that, to be rendered ineligible for burial in a Federally funded

cemetery, a person would have to be convicted of both a specified terrorist-type activity and the murder of a Federal employee engaged in official duties. Therefore, a deadly terrorist act, no matter how heinous, would not render a person ineligible for burial unless a Federal employee were killed while performing official duties.

The provision of H.R. 2040 authorizing an administrative determination of ineligibility for a person not brought to trial because of insanity would seem to make a distinction between those found by a jury to be not guilty by reason of insanity and those found by a judge to be not competent to stand trial. Further, this provision would run counter to the long-standing tradition, in VA law and elsewhere, of not holding the insane responsible for their actions. We also note that, not only would the bill result in application of different standards of proof for judicially based and administratively determined forfeitures, it would dispense in administrative proceedings with the requirement, applicable in the case of forfeitures based on criminal convictions, that the crimes at issue justify a sentence of death or life imprisonment. For these reasons, and because conducting such an involved administrative proceeding in the very limited time

available for making burial-eligibility determinations could prove impossible, we urge the Committee to delete this provision.

Neither S. 923 nor H.R. 2040 includes a reporting provision similar to the one found at 38 U.S.C. § 6105(c), which requires the appropriate Secretary or the Attorney General to inform VA when a person is convicted of one of the crimes listed in that statute. Lack of a notification provision could lead to haphazard reporting of crimes rendering persons ineligible for benefits, and uneven application of the forfeiture provision.

Although H.R. 2040 would specifically bar burial in Arlington National Cemetery for persons found to have committed specified offenses, S. 923 would not cover burial in Arlington National Cemetery because burial there is not a benefit provided pursuant to title 38, United States Code. Neither H.R. 2040 nor S. 923 would bar burial in the Military Retirement Home or military installations.

We also wish to call to the Committee's attention that H.R. 2040, while denying the right to burial in a Federally funded cemetery to a person convicted of certain crimes,

would not bar that individual, at death, from receiving certain other forms of recognition under title 38, United States Code, such as a headstone or marker for use in a non-Federally funded cemetery, a flag with which to drape the casket at burial, or a presidential memorial certificate.

Finally, we note that S. 923 does not specify an effective date or whether it applies to crimes committed before the date of its enactment. This ambiguity may result in challenges to the application of the legislation.

In summary, the terms of H.R. 2040 and S. 923 present some problems that could make implementation difficult or inequitable in certain cases. However, of the two bills, VA would prefer the more narrowly focused H.R. 2040.

This concludes my statement. I would be pleased to respond to any questions the Committee may have.