SEC. ___. BURIAL OF UNCLAIMED REMAINS OF INMATES AT THE UNITED STATES DISCIPLINARY BARRACKS CEMETERY, FORT LEAVENWORTH, KANSAS.

Section 985 of title 10, United States Code, is amended—

(1) in the matter preceding paragraph (1) of subsection (b), by striking "A person who is ineligible" and inserting "Except as provided in subsection (c), a person who is ineligible";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

"(c) UNCLAIMED REMAINS OF MILITARY PRISONERS.—Subsection (b) shall not preclude the burial at the United States Disciplinary Barracks Cemetery at Fort Leavenworth, Kansas, of a military prisoner, including a military prisoner who is a person described in section 2411(b) of title 38, who dies while in custody of a military department and whose remains are not claimed by the person authorized to direct disposition of the remains or by other persons legally authorized to dispose of the remains.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by Section Analysis

This proposal would allow military prisoners who are in the custody of a military department at the time of their death to be buried in the United States (U.S.) Disciplinary Barracks Cemetery if their family members or someone authorized to direct disposition of their remains fails to claim them. Currently persons who are otherwise eligible for interment in national or military cemeteries but for having been convicted of crimes covered under 38 U.S.C. 2411(b) are precluded from being interred in those cemeteries. As such, if a military prisoner convicted of such a crime dies while in military custody and the person authorized to direct disposition of the remains fails to claim the body, the Department of the Army has no option but to contract for burial of the remains in a civilian cemetery.

The current law, section 985 of title 10, United States Code, was enacted following the execution of Timothy McVeigh (convicted in the 1995 bombing of the Murrah Federal Building in Oklahoma City) after a public outcry when it was determined that he was eligible for interment in Arlington National Cemetery. National and military cemeteries are typically places of honor where our veterans and family members are eligible for interment in their final resting places. The intent of section 985 was to prevent people who have committed Federal or State capital crimes from being interred in places of honor.

Unlike other national or military cemeteries, the U.S. Disciplinary Barracks Cemetery, a military cemetery under the jurisdiction of the Army, is not a place of honor. The U.S. Disciplinary Barracks Cemetery was established in 1884 for inmates who die or are executed, or whose next of kin refuses the remains. The cemetery does not fly the U.S. Flag, the inmates interred there are laid to rest without honor facing north to south as opposed to honorably interred veterans at other cemeteries who are laid east to west in order to have the sun rise and set on their faces, and the inmate's headstones do not acknowledge their military service. While not a place of honor, the cemetery is a still a final resting place.

The objective of this legislative proposal is to provide a statutory exception to the section 985 prohibition thereby allowing the Secretary of the Army to inter in the U.S. Disciplinary Barracks Cemetery inmates who die while in military custody, regardless of whether or not they meet the criteria for crimes described in 38 U.S.C. 2411(b). This legislative proposal would remedy the problem addressed above. Should the U.S. Disciplinary Barracks have an inmate pass away who falls under the restrictions imposed by section 985, and whose remains are left unclaimed, the Army would not be burdened with acquiring a civilian burial plot or inurnment niche, and we could use the existing cemetery established for such individuals.

However infrequent the need may arise, the proposal would offer the Army the flexibility it needs to carry out the important mission of the U.S. Disciplinary Barracks Cemetery, without authorizing covered individuals to receive military honors. The United States Disciplinary Barracks Cemetery is only for prisoners. No other veterans are buried there or are allowed to be buried there.

Budget Implications: There is a zero sum budget impact from this proposal. The Fort Leavenworth Garrison is already funded via Operation and Maintenance funding, for the care and shipment of remains for inmates who pass away or are executed at the prison. Should an inmate's remains be unclaimed, instead of expending funds for shipping and burial related costs, these funds would be redirected to conducting the interment at the U.S. Disciplinary Barracks Cemetery.

Changes to Existing Law: This proposal would make the following changes to section 985 of title 10, United States Code:

§985. Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits

(a) PROHIBITION OF PERFORMANCE OF MILITARY HONORS.—The Secretary of a military department and the Secretary of Homeland Security, with respect to the Coast Guard when it is

not operating as a service in the Navy, may not provide military honors (under section 1491 of this title or any other authority) at the funeral or burial of any of the following persons:

(1) A person described in section 2411(b) of title 38.

(2) A person who is a veteran (as defined in section 1491(h) of this title) or who died while on active duty or a member of a reserve component, when the circumstances surrounding the person's death or other circumstances as specified by the Secretary of Defense are such that to provide military honors at the funeral or burial of the person would bring discredit upon the person's service (or former service).

(b) DISQUALIFICATION FROM BURIAL IN MILITARY CEMETERIES.—~~A person who is ineligible~~Except as provided in subsection (c), a person who is ineligible for interment in a national cemetery under the control of the National Cemetery Administration by reason of section 2411(b) of title 38 is not entitled to or eligible for, and may not be provided, burial in-

(1) Arlington National Cemetery;

(2) the Soldiers' and Airmen's National Cemetery; or

(3) any other cemetery administered by the Secretary of a military department or the Secretary of Defense.

(c) UNCLAIMED REMAINS OF MILITARY PRISONERS.—Subsection (b) shall not preclude the burial at the United States Disciplinary Barracks Cemetery at Fort Leavenworth, Kansas, of a military prisoner, including a military prisoner who is a person described in section 2411(b) of title 38, who dies while in custody of a military department and whose remains are not claimed by the person authorized to direct disposition of the remains or by other persons legally authorized to dispose of the remains.

~~(c)~~(d) DEFINITION.—In this section, the term "burial" includes inurnment.