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# Military Funeral Honors for Veterans

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March 23, 2016

**Congressional Research Service**

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[www.crs.gov](http://www.crs.gov)

R44426

## Summary

Eligible veterans are entitled to receive military honors at their funerals. Federal law, enacted in 1999 (P.L. 105-261) and amended in 2000 (P.L. 106-65) provides that each eligible veteran shall be provided, at minimum,

- a two-person funeral honors detail,
- the playing of taps, and
- the folding and presentation of a U. S. flag to the family.

The Department of Veterans Affairs (VA) issues these honors at no cost to the veteran's family. These honors can be augmented to include color guards, pallbearers, and firing parties provided either by the military or civilians in approved veterans or other organizations. Funeral honors at Arlington National Cemetery include additional elements according to the rank of the deceased.

Persons involved in capital crimes are ineligible for military funeral honors. In 1997, Congress began prohibiting interment and inurnment in national cemeteries and military funeral honors for persons involved in federal or state capital crimes. In 2006, Congress passed a law (P.L. 109-461) ordering the cremated remains of a veteran who had been convicted of two counts of murder be removed from Arlington National Cemetery.

In 2013, pursuant to the Supreme Court's decision in *United States v. Windsor*, same-sex spouses of eligible veterans became eligible for interment and inurnment in national cemeteries.

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## Introduction

Eligible veterans are entitled to receive certain military honors at their funerals. In general, these honors are provided by the Department of Defense (DOD) to eligible veterans who are interred or inurned at Department of Veterans Affairs (VA) national cemeteries, state veterans cemeteries, and private cemeteries.<sup>1</sup> There is no cost to the family of a veteran for military honors.

## Authorization and History

The current authorization and requirements for the provision of military honors at veterans' funerals are provided in statute at 10 U.S.C. § 1491, and were established by Section 567 of Division A of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, P.L. 105-261; and amended by the National Defense Authorization Act for Fiscal Year 2000, P.L. 106-65. In the conference report accompanying P.L. 105-261, the conferees provided the following justification for the authorization of military honors for veterans' funerals:

The conferees agree that men and women have unselfishly answered the call to arms at tremendous personal sacrifice. The conferees agree that men and women, who have served honorably, whether in war or peace, deserve commemoration for their military service at the time of their death by an appropriate tribute. Burial honors are an important means of reminding Americans of the sacrifices endured to keep the Nation free.<sup>2</sup>

Prior to the enactment of P.L. 105-261, there was no formal statutory requirement that the DOD provide military honors at veterans' funerals. However, such honors were customarily provided in accordance with the statutory requirement that a U.S. flag be presented to the next of kin of eligible veterans;<sup>3</sup> military custom; and DOD Directive 1300.15, issued in 1985, which directed the military branches to provide to deceased veterans "appropriate tribute within the constraints of available resources."<sup>4</sup>

## Eligibility for Funeral Honors

Active duty service-members and members of the Selected Reserve (which generally includes members of the National Guard) who die while in service are eligible for military funeral honors.<sup>5</sup> In addition, federal law provides that veterans who served on active duty and former members of the Selected Reserve may be eligible for military funeral honors.

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<sup>1</sup> For information on eligibility for interment or inurnment in the Department of Veterans Affairs (VA) national cemeteries, see CRS Report R41386, *Veterans' Benefits: Burial Benefits and National Cemeteries*.

<sup>2</sup> U.S. Congress, *Strom Thurmond National Defense Authorization Act for Fiscal Year 1999*, conference report to accompany H.R. 3616, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 22, 1998, H.Rept. 105-736 (Washington: GPO, 1998), p. 667.

<sup>3</sup> 10 U.S.C. § 1482 and 38 U.S.C. § 2301.

<sup>4</sup> Department of Defense (DOD), *Military Funeral Support*, Directive 1300.15, September 30, 1985; this directive replaced a DOD directive issued in 1979. For additional information on the history of military honor at veterans' funerals, see DOD, *Report to Congress on Military Funeral Honors for Veterans: As Required by Section 567 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999*, April 1999, <http://www.dod.gov/pubs/funeralhonors041999.pdf>.

<sup>5</sup> For additional information on the reserve components of the Armed Forces, see CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*.

## Veterans Who Served on Active Duty

A veteran who served on active duty is eligible if he or she meets one of the following requirements:

served on active duty in the Army, Navy, Marine Corps, Air Force, Coast Guard, National Oceanic and Atmospheric Administration (NOAA) Commissioned Corps, or Public Health Service, or a civilian group granted veterans status pursuant to the GI Bill Improvement Act of 1977, P.L. 95-202,<sup>6</sup> and was discharged or released for reasons other than dishonorable; or

served on active duty in the Army, Navy, Marine Corps, Air Force, Coast Guard, NOAA Commissioned Corps, or Public Health Service, or a civilian group granted veterans status pursuant to the GI Bill Improvement Act of 1977, P.L. 95-202, and was disabled or died from a disease or injury incurred or aggravated in the line of duty (either active duty or inactive duty for training).<sup>7</sup>

## Former Members of the Selected Reserve

A former member of the Selected Reserve is eligible if he or she meets one of the following requirements:

- completed at least one enlistment or, if an officer, the period of initial obligated service, in the Selected Reserve; or
- was discharged before completing an initial enlistment or, if an officer, the period of initial obligated service, in the Selected Reserve for a disability incurred or aggravated in the line of duty.<sup>8</sup>

## Ineligibility

A person may be ineligible for military funeral honors based on his or her type of discharge from the Armed Forces or involvement in a capital crime. In addition, a person may be ineligible for military funeral honors if the circumstances surrounding the person's death or other circumstances specified by the Secretary of Defense are such that military funeral honors would bring discredit upon the person's service or former service.

### Ineligibility Based on Type of Discharge

A person who was discharged from active duty or the Selected Reserve under dishonorable conditions is ineligible for military funeral honors. Current DOD instruction provides that the following specific types of discharges make a person ineligible for military funeral honors:

- dishonorable discharge;
- bad conduct discharge;
- dismissal from service awarded by courts-martial;

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<sup>6</sup> An example of a civilian group granted veterans status is World War II-era merchant mariners. For additional information, see CRS Report R44162, *Veterans' Benefits: Eligibility of Merchant Mariners*, by (name redacted). A complete list of civilian groups granted veterans status is provided at 38 C.F.R. § 3.7.

<sup>7</sup> 10 U.S.C. § 1491(h)(1) and 38 U.S.C. § 101(24).

<sup>8</sup> 10 U.S.C. § 1491(h)(2) and 38 U.S.C. § 2301(f).

- an under other than honorable conditions discharge; and
- an officer resignation for the good of the service in lieu of courts-martial, which results in a discharge characterization of under other than honorable conditions.<sup>9</sup>

### **Ineligibility Based on Involvement in a Capital Crime**

A person is ineligible for military funeral honors if he or she is

- convicted of a federal capital crime, the conviction is final, and the sentence has not been commuted by the President;
- convicted of a state capital crime, the conviction is final, and the sentence has not been commuted by a governor of a state;
- found by the Secretary of Veterans Affairs or, in the case of a burial or inurnment at Arlington National Cemetery, the Secretary of the Army by clear and convincing evidence and after the opportunity for a hearing, to have committed a federal or state capital crime but has not been convicted of this crime due to death or flight to avoid prosecution.<sup>10</sup>

For the purposes of determining eligibility for military funeral honors, a federal capital crime is any crime under federal law for which a sentence of life imprisonment or death may be imposed. A state capital crime is the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of life imprisonment or death may be imposed under state law.<sup>11</sup>

A person ineligible for military funeral honors based on involvement in a capital crime is also ineligible for interment or inurnment in a VA national cemetery, Arlington National Cemetery, or any military cemetery.<sup>12</sup>

### ***History of the Capital Crime Provisions***

The denial of eligibility for military funeral honors for persons involved in capital crimes began in 1997 with the enactment of P.L. 105-116, which denied eligibility for interment or inurnment in a VA national cemetery or Arlington National Cemetery to those involved in such offenses. In addition, this legislation made the prohibition of such interments in state veterans' cemeteries a condition of receiving grants from the VA to establish, expand, or approve such cemeteries.

Under the provisions of P.L. 105-116, a person convicted of a federal capital crime was denied eligibility for interment or inurnment in VA national cemetery or Arlington National Cemetery only if he or she was sentenced to death or life imprisonment and for a state capital crime only if sentenced to death or life imprisonment without the possibility of parole. This permitted persons convicted of state capital crimes but given the opportunity for parole to be interred or inurned in national cemeteries.

Among the reasons cited for the passage of P.L. 105-116 was to prevent Timothy McVeigh, an Army veteran convicted of federal offenses in the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, OK, from being buried in a national cemetery. Speaking in support of

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<sup>9</sup> DOD, *Military Funeral Support*, Instruction 1300.15, October 22, 2007, p. 10, <http://www.dtic.mil/whs/directives/corres/pdf/130015p.pdf>.

<sup>10</sup> 10 U.S.C. § 985(a)(1) and 38 U.S.C. § 2411.

<sup>11</sup> 38 U.S.C. § 2411(f).

<sup>12</sup> 10 U.S.C. § 985(b) and 38 U.S.C. § 2411.

the legislation, which unanimously passed the Senate and passed the House of Representatives by unanimous consent, Representative Joe Knollenberg stated,

As pictures of the Oklahoma City bombing were brought into the lives of everyone across this great country, no one watched with more horror than I did. It will always remain ingrained in our hearts, our minds, and our souls.

Like the rest of the Nation, I was saddened more by the fact the person responsible for killing 168 people in the most heinous domestic terrorist act ever committed could receive a hero's burial with taps, a 21-gun salute, and a flag-draped coffin.<sup>13</sup>

The denial of eligibility based on involvement in a capital crime was extended to military funeral honors in 2006 with the enactment of Section 662 of the National Defense Authorization Act for 2006, P.L. 109-163. This legislation also replaced the requirement that a person be sentenced to death or life imprisonment for a federal capital crime or death or life imprisonment without parole for a state capital crime with the requirement that a federal or state capital crime conviction be final, thus eliminating the possibility of a person sentenced to life imprisonment with parole from being interred or inurned in a national cemetery or given military funeral honors.

### *The Case of Russell Wayne Wagner*

Russell Wayne Wagner was an honorably discharged Army veteran of the Vietnam War who in 1994 was convicted of killing a married couple in Maryland and sentenced to two life sentences with the possibility of parole. Wagner died in prison in 2005, before enactment of P.L. 109-163, which would have affected his case in two ways.

First, because prior to the enactment of P.L. 109-163, a sentence of life imprisonment without parole was required to deny interment or inurnment at a national cemetery, Wagner, whose sentence included the possibility of parole, was inurned at Arlington National Cemetery.

Second, because the law prior to the enactment of P.L. 109-163 did not prohibit the provision of military honors to persons involved in capital crimes, Wagner's funeral at Arlington National Cemetery included such honors.

Concerns raised by the family of Wagner's victims were cited as a reason for enactment of P.L. 109-163. This law would have prevented Wagner from his inurnment with military funeral honors at Arlington National Cemetery. The victims' son testified at a Senate hearing in support of the legislation.<sup>14</sup>

Although P.L. 109-163 ensured that in the future a person involved in a capital crime, regardless of parole status, would be denied interment or inurnment in a national cemetery and military funeral honors, it did not affect the physical placement of the cremated remains of Wagner, which remained at Arlington National Cemetery. Section 404 of the Veterans Benefits, Health Care, and Information Technology Act of 2006, P.L. 109-461, enacted in 2006, ordered the Secretary of the Army to remove Wagner's cremated remains from Arlington National Cemetery and return them to his family.

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<sup>13</sup> Rep. Joe Knollenberg, "Denying Veterans Benefits to Persons Convicted of Federal Capital Offenses," House debate, *Congressional Record*, vol. 143, part 150 (October 31, 1997), p. H9839.

<sup>14</sup> U.S. Congress, Senate Committee on Veterans' Affairs, *Preserving Sacred Ground: Should Capital Offenders be Buried in America's National Cemeteries*, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., September 22, 2005, S.Hrg. 109-729 (Washington: GPO, 2007).

## Funeral Components

Federal law prescribes the minimum elements required for military funeral honors.<sup>15</sup> These include a funeral honors detail of at least two non-retired uniformed members of the Armed Forces, the folding and presentation of a U.S. flag to the family of the deceased, and the playing of Taps. Each branch of the Armed Forces is free to augment these minimum components with additional elements such as firing parties, color guards, or additional participating military personnel.

### Funeral Honors Detail

The funeral honors detail must consist of at least two non-retired members of the Armed Forces in uniform, with at least one member being from the deceased's branch of service.<sup>16</sup> The funeral honors detail may consist of active duty members of the Armed Forces or members of the Ready Reserve, including the National Guard. Members of the funeral honors detail are generally drawn from local military units.

### Authorized Provider Partnership Program

Federal law allows the funeral honors detail to be augmented by retired members of the Armed Forces and members of veterans and other organizations approved by the Secretary of Defense.<sup>17</sup> The DOD established the Authorized Provider Partnership Program (AP3) to authorize volunteers to augment funeral honors details. AP3 participants are commonly members of Veterans Service Organizations (VSOs) recognized by the VA pursuant to federal law or regulations,<sup>18</sup> other veterans groups, and Reserve Officer Training Corps (ROTC) detachments. AP3 participants may augment the funeral honors detail by serving as members of color guards, firing parties, pallbearers, or buglers. AP3 members are selected and trained by local military base commanders.

### Stipends and Reimbursements for Members of the Funeral Honors Detail

Members of the Ready Reserve, including the National Guard, who serve on a funeral honors details are entitled to a daily stipend of \$50 as set in law.<sup>19</sup> AP3 members are entitled to either reimbursement for travel and other expenses related to their participation in funeral honors details or a \$50 daily stipend which is set by the DOD. AP3 members may also be provided with assistance in obtaining required equipment or uniforms, such as access to military uniform supply stores.

## Taps

Taps is a bugle call that has been used by the United States Armed Forces since the Civil War.<sup>20</sup> It has been used at military funeral ceremonies since at least 1891 and the playing of Taps is a

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<sup>15</sup> 10 U.S.C. § 1491.

<sup>16</sup> Funeral details for members of the National Oceanic and Atmospheric Administration (NOAA) Commissioned Corps and Public Health Service are made up of members of the Coast Guard.

<sup>17</sup> 10 U.S.C. § 1491(b)(2).

<sup>18</sup> 38 U.S.C. § 5902 and 38 C.F.R. § 14.628.

<sup>19</sup> 37 U.S.C. § 495.

<sup>20</sup> For a history of Taps, see Jari Villanueva, *Twenty-Four Notes That Tap Deep Emotions: The Story of America's* (continued...)



required component of military funeral honors.<sup>21</sup> Taps may be played by a live bugler from the military or AP3 program, or a recorded version may be played via music player or a ceremonial bugle. A ceremonial bugle has an electronic device in the bell of the bugle that plays a recording of Taps while a member of the funeral honors detail holds the bugle in playing position.

## Folding and Presentation of the United States Flag

Persons entitled to military funeral honors are also entitled by law to a U.S. flag, referred to as a burial flag, to be used during their funeral. The burial flag is provided at no cost to the family of the deceased by the VA and is distributed through local VA offices and post offices.<sup>22</sup> Regardless of how many funeral or memorial services are held for the veteran, the law authorizes only one burial flag per veteran.

The flag is commonly draped over the casket of the deceased as follows in accordance with federal law:

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.<sup>23</sup>

After the playing of Taps, two members of the funeral honors detail fold the flag into a traditional tri-corned shape with only the union, or blue field, visible.<sup>24</sup> The flag is then presented to the next-of-kin or other family member by an honors detail member in accordance with the following protocol:

1. Stand facing the flag recipient and hold the folded flag waist high with the straight edge facing the recipient.
2. Lean toward the flag recipient and solemnly present the flag to the recipient.
3. Recite the following statement, inserting the appropriate branch of service:

On behalf of the President of the United States, (the United States Army; the United States Marine Corps; the United States Navy; or the United States Air Force), and a grateful nation, please accept this flag as a symbol of our appreciation for your loved one's honorable and faithful service.<sup>25</sup>

If there is no funeral honors detail, a funeral director may present the folded flag to the family.

A number of Internet postings have suggested that the statement accompanying the flag presentation was changed to remove the reference to the President.<sup>26</sup> No such change has been made. Rather, prior to 2012, there was no standard language for the presentation of the burial

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(...continued)

*Most Famous Bugle Call* (Baltimore: JV Music, 2001).

<sup>21</sup> 10 U.S.C. § 1491(c).

<sup>22</sup> In most cases, a funeral director obtains the flag for the family. However, anyone can apply for a burial flag by submitting VA Form 27-2008, available at [http://www.va.gov/vaforms/form\\_detail.asp?FormNo=27-2008](http://www.va.gov/vaforms/form_detail.asp?FormNo=27-2008).

<sup>23</sup> 4 U.S.C. § 7(n).

<sup>24</sup> For details on the folding of the United States flag, see DOD, *Flag Presentation Protocol*, Brochure, <http://download.militaryonesource.mil/12038/MOS/Brochures/MFH-FlagPresentationProtocol-Brochure.pdf>.

<sup>25</sup> DOD, Flag Presentation Protocol, Brochure and Department of Defense, *Military Funeral Protocol: Flag Presentation and Flag Folding*, <https://www.dmdc.osd.mil/mfh/getLinks.do?tab=Flag>.

<sup>26</sup> For additional information on these postings, see the website Snopes.com at <http://www.snopes.com/politics/military/funeral.asp>.

flag. However, effective August 17, 2012, the DOD standardized the flag presentation statement to its current form and invited the Coast Guard to use the same statement for its veterans.<sup>27</sup>

## **Military Funeral Honors at Arlington National Cemetery**

The eligibility requirements for interment or inurnment at Arlington National Cemetery, which is administered by the Department of the Army and not the VA, differ from, and are generally more stringent than, the requirements for eligibility at VA national cemeteries and general eligibility for military funeral honors. There are different eligibility requirements for ground burial and inurnment in the Columbarium and Niche Wall at Arlington National Cemetery.<sup>28</sup> Once eligibility for ground burial or inurnment at Arlington National Cemetery is determined, honors are afforded according to rank and provided by the veteran's branch of service.

### **Enlisted Personnel**

Enlisted personnel at pay grades E-8 or below are entitled to Standard Military Honors, which consist of

- a casket team of body bearers,
- a firing party, and
- a bugler.

### **Senior Enlisted Personnel, Warrant Officers, and Commissioned Officers**

Senior enlisted personnel at pay grade E-9, warrant officers, and commissioned officers entitled to Full Military Honors, which include Standard Military Honors and

- an escort platoon with size determined by rank;
- a military band; and
- the use of the caisson, if available.

### **Army and Marine Corps Colonels**

Colonels in the Army and Marine Corps are also entitled to the caparisoned (decorated) riderless horse; if available.

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<sup>27</sup> DOD, *Military Funeral Protocol: Flag Presentation and Flag Folding*, at <https://www.dmdc.osd.mil/mfh/getLinks.do?tab=Flag>.

<sup>28</sup> Eligibility requirements for burial are at 32 C.F.R. § 553.15. Eligibility requirements for inurnment in the Columbarium or Niche Wall are at 32 C.F.R. § 553.15a.

## General and Flag Officers, Other High State Officials, and the President

General and flag officers, other high state officials, and the President are entitled to cannon or minute gun salutes of varying sizes depending upon rank.

## Personnel Killed in Action

Effective January 2, 2009, all servicemembers who die from wounds received as a result of enemy action and are being interred, inurned, or memorialized at Arlington National Cemetery are eligible to receive Full Military Honors regardless of rank.<sup>29</sup>

## Spouses and Eligible Dependents

Spouses and eligible dependents of persons eligible for interment or inurnment at Arlington Cemetery are entitled to a casket team of body bearers from the veteran's branch of service. Pursuant to Supreme Court's decision in *United States v. Windsor*, declaring Section 3 of the Defense of Marriage Act<sup>30</sup> unconstitutional, same-sex spouses are eligible for interment or inurnment at Arlington National Cemetery and any VA national cemetery effective June 26, 2013.<sup>31</sup>

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<sup>29</sup> Department of the Army, *Funeral Honors at Arlington National Cemetery for Soldiers Who Die as a Result of Wounds Received in Action*, Secretary of the Army Memorandum, January 2, 2009.

<sup>30</sup> 1 U.S.C. § 7.

<sup>31</sup> Department of Justice, *Implementation of United States v. Windsor*, Memorandum to the President, June 20, 2014, <https://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf>.

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