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“STOLEN VALOR”: FRAUDULENTLY CLAIMING MILITARY SERVICE OR AWARDS

There has long been concern over persons who falsely claim to have served in the armed forces, to have been awarded military awards, or to have been members of elite fighting units such as the Army Rangers, the Green Berets, or the Navy Seals. Federal legislation has addressed this issue, and various states, including Wisconsin, have enacted or considered legislation to combat the practice. This brief summarizes the issue of criminalizing the act of fraudulently claiming military service or receipt of military awards, focusing on a bill recently introduced in the Wisconsin legislature.

HISTORY

The problem of stolen valor has been an issue since the founding of the United States. George Washington took a dim view of those who commit “lies of honor.” He originated the Badge of Military Merit, the decoration now known as the Purple Heart, which is awarded to military members who are killed or injured as a result of enemy action. He wrote in 1782 of the appalling practice of impersonating a decorated serviceman: “Should any who are not entitled to these honors have the insolence to assume the badges of them, they shall be severely punished.”

In 1948, soon after World War II flooded the country with returning veterans seeking jobs and schooling, Congress enacted the first “stolen valor” act, making it a federal misdemeanor to wear unearned medals and decorations. That law, Title 18, Section 704, of the United States Code, remained unamended for nearly 60 years. On December 20, 2006, reacting to concerns raised by

veterans returning from the conflicts in Iraq and Afghanistan, President George W. Bush signed the Stolen Valor Act of 2005 (Public Law 109-437). This act broadened the law’s provisions to criminalize the false representation of oneself as having received any U.S. military decoration or medal. The act provided for a penalty of a fine and imprisonment for up to six months, unless the deception concerned the Medal of Honor, in which case imprisonment could be for up to one year.

The U.S. Supreme Court struck down the federal Stolen Valor Act in June 2012. The case of *United States v. Alvarez*, 132 S. Ct. 2537 (2012), involved a member of the Three Valleys Water District (California) Board of Directors who falsely claimed military service and that he had been awarded the Medal of Honor. The Supreme Court, in an opinion written by Justice Anthony Kennedy, affirmed the conclusion of the court of appeals that the law was unconstitutional under First Amendment free speech protections, noting that content-based restrictions on speech are subject to strict scrutiny and almost always invalid:

As a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content....The nation well knows that one of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace.

In response to the Supreme Court’s decision, President Barack Obama announced a new Department of Defense

Internet site, “Military Awards For Valor—Top 3,” to assist members of the public in spotting persons who falsely claim to have received the Medal of Honor or other high decorations. President Obama commented, “It may no longer be a crime for con artists to pass themselves off as heroes, but one thing is certain—it is contemptible.” Private individuals and organizations that focus on exposing false claims of military service and awards pressed for a revised law to address the issue while accommodating the court’s objections. Noteworthy advocates included the Guardian of Valor organization, whose motto quotes George Washington, “Guard against imposters of pretended patriotism,” and the Stolen Valor organization. A leader of the latter group, Vietnam combat veteran B. G. Burkett, is the coauthor of the book *Stolen Valor: How the Vietnam Generation Was Robbed of Its Heroes and Its History*, which documents, among other topics, “wannabes” who lie about their experiences in the Southeast Asian conflict.

In June 2013, Congress approved the Stolen Valor Act of 2013 (Public Law 113-12), which was introduced in January 2013 by U.S. Representative Joe Heck (R-Nevada). This act responded to the *Alvarez* decision by narrowing the scope of the law to violations amounting to fraud, specifying that the person making the false representation must be attempting to materially profit from the lie: “Whoever, with intent to obtain money, property, or other tangible benefit, fraudulently holds oneself out to be a recipient of a medal...shall be fined...imprisoned not more than one year, or both.” It also expanded the list of decorations to include combat awards such as the Combat Infantryman’s Badge, Combat Action Badge, Combat Medical Badge, Combat Action Ribbon, or Combat Action Medal.

WISCONSIN LEGISLATION

2015 Assembly Bill 114, relating to falsely claiming military service or honors, and

providing a penalty, was introduced on March 26, 2015, by Representatives Steffen, Petryk, and 27 other members of the Wisconsin Assembly, and was cosponsored by Senators Roth, Nass, and seven other senators. The bill was immediately referred to the Assembly Committee on State Affairs and Government Operations.

Assembly Bill 114 proposes creating Section 956.78, Wisconsin Statutes, to make it a Class A misdemeanor for a person to “knowingly and with the intent to receive a tangible benefit” falsely claim that he or she is or was a service member in the military, or that he or she was awarded any of the following: “a Congressional Medal of Honor, a Distinguished Service Cross, a Navy Cross, an Air Force Cross, a Silver Star, a Purple Heart, a Combat Infantryman’s Badge, a Combat Action Badge, a Combat Medical Badge, a Combat Action Ribbon, a Combat Action Medal, or a Special Operations Identifier or Special Qualification or Skill Identifier, as authorized by Congress or pursuant to federal law for the United States armed forces.” The bill defines “tangible benefit” to include “financial remuneration, an effect on the outcome of a criminal or civil court proceeding, an effect on an election, and any benefit relating to service in the military that is provided by a federal, state, or local governmental unit or agency.” Common benefits would include merchant discounts, civil service hiring preferences, or educational benefits available to eligible veterans under the Wisconsin GI Bill, which provides for remission of tuition and fees for up to four years of education at any institution of higher education in the Wisconsin university or technical college systems.

A Class A misdemeanor is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. The bill further provides that a person who makes a false claim with the intent to commit or aid or abet the commission of another crime is guilty of a Class H felony, which is punishable by

a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

OTHER STATES

According to the National Conference of State Legislatures, at least 15 states have some form of stolen valor law: California, Connecticut, Florida, Illinois, Iowa, Kentucky, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Tennessee, and Texas. For example, Kentucky's law specifies that the deception requires the "intent to defraud, obtain employment, or be elected or appointed to public office," and carries a penalty of a fine not to exceed \$5,000, imprisonment in the county jail for not more than 12 months, or both. California's law punishes phony military service claims for the purposes of tangible gain, and in response to the *Alvarez* case, further provides that any local or state elected official forfeits his or her office upon conviction of a crime pursuant to either the federal or state stolen valor law.

Most recently, on January 20, 2015, Massachusetts Representative John Velis introduced a bill (H.1641) that would make a person who engages in fraudulent misrepresentation of military service or awards for the purpose of obtaining "money, property, or another tangible benefit" subject to imprisonment for up to one year and a \$1,000 fine. Representative Velis, an attorney and Army Reserve Captain who served in Afghanistan, was quoted by Fox News on March 21, 2015, as saying, "Any person who has served will tell you that it's reprehensible when someone fraudulently represents themselves as a veteran for some type of financial gain."

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