

SUBSTITUTE HOUSE BILL 1036

State of Washington

61st Legislature

2009 Regular Session

By House Judiciary (originally sponsored by Representatives Kelley, Morrell, Moeller, Rodne, Sequist, McCoy, Green, Goodman, Kirby, McCune, Hurst, Miloscia, Hunt, Appleton, Chase, Conway, Williams, Campbell, Ross, and Bailey; by request of Washington Military Department)

READ FIRST TIME 02/02/09.

1 AN ACT Relating to the Washington code of military justice;
2 amending RCW 38.32.010, 38.32.020, 38.38.004, 38.38.008, 38.38.024,
3 38.38.080, 38.38.092, 38.38.132, 38.38.180, 38.38.188, 38.38.240,
4 38.38.244, 38.38.248, 38.38.312, 38.38.316, 38.38.376, 38.38.388,
5 38.38.396, 38.38.408, 38.38.412, 38.38.624, 38.38.752, 38.38.760,
6 38.38.800, 38.38.840, 38.38.844, and 38.38.848; and adding new sections
7 to chapter 38.38 RCW.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 38.32.010 and 1989 c 19 s 39 are each amended to read
10 as follows:

11 Any member of the organized militia committing nonmilitary offenses
12 under chapter 38.38 RCW while on duty status (~~(as provided in RCW~~
13 ~~38.38.624,))~~ or within state armories(~~(, committing offenses against~~
14 ~~the laws of the state,))~~ shall be promptly arrested by the military
15 authorities and turned over to the civil authorities of the county or
16 city in which the offense was committed.

17 **Sec. 2.** RCW 38.32.020 and 1989 c 19 s 40 are each amended to read
18 as follows:

1 ~~(1) Military offenses under chapter 38.38 RCW committed ((while on~~
2 ~~inactive duty or active state service as defined in RCW 38.04.010))~~ by
3 members of the organized militia may be tried and punished as provided
4 under chapter 38.38 RCW ~~((after this duty or service has terminated,~~
5 ~~and if found guilty the accused shall be punished accordingly. Any~~
6 ~~member of the organized militia on "inactive duty" or "active state~~
7 ~~service," as defined in RCW 38.04.010, committing any offense under~~
8 ~~chapter 38.38 RCW, where the offense charged is also made an offense by~~
9 ~~the civil law of this state, may, in the discretion of the officer~~
10 ~~whose duty it is to approve the charge, be turned over to the proper~~
11 ~~civil authorities for trial))~~.

12 (2) Primary jurisdiction over military offenses enumerated in
13 chapter 38.38 RCW is with military authorities. Primary jurisdiction
14 over nonmilitary offenses is with civilian authorities. If an offense
15 may be both military and nonmilitary, the military authorities may
16 proceed only after the civilian authorities have declined to prosecute
17 or dismissed the charge, provided jeopardy has not attached.
18 Jurisdiction over attempted crimes, conspiracy crimes, solicitation,
19 and accessory crimes must be determined by whether the underlying
20 offense is a military or nonmilitary offense.

21 ~~(3) Any member of the organized militia ((on "inactive duty" or~~
22 ~~"active state service," as defined in RCW 38.04.010,))~~ committing any
23 offense under chapter 38.38 RCW~~((7))~~ may, if such offense is committed
24 ~~((upon))~~ on a military reservation of the United States within this
25 state, be turned over to the civil authorities for trial as provided by
26 federal law.

27 **Sec. 3.** RCW 38.38.004 and 1989 c 48 s 1 are each amended to read
28 as follows:

29 In this chapter, unless the context otherwise requires:

30 (1) "Organized militia" means the national guard of the state, as
31 defined in section 101(3) of title 32, United States Code, and any
32 other military force organized under the laws of the state of
33 Washington.

34 (2) "Officer" means commissioned or warrant officer.

35 (3) "Commissioned officer" includes a commissioned warrant officer.

36 (4) "Commanding officer" includes only commissioned officers in
37 command of a unit.

1 (5) "Superior commissioned officer" means a commissioned officer
2 superior in rank or command.

3 (6) "Enlisted member" means a person in an enlisted grade.

4 (7) "Grade" means a step or degree, in a graduated scale of office
5 or military rank, that is established and designated as a grade by law
6 or regulation.

7 (8) "Rank" means the order of precedence among members of the
8 organized militia.

9 ~~(9) ((The term "active state service" or "active training duty"~~
10 ~~shall be construed to be any service on behalf of the state, or at~~
11 ~~encampments whether ordered by state or federal authority or any other~~
12 ~~duty requiring the entire time of any organization or person except~~
13 ~~when called or drafted into the federal service by the president of the~~
14 ~~United States.~~

15 ~~The term "inactive duty" shall include periods of drill and such~~
16 ~~other training and service not requiring the entire time of the~~
17 ~~organization or person, as may be required under state or federal laws,~~
18 ~~regulations, or orders, including travel to and from such duty.~~

19 ~~(+10))~~ "Military court" means a court-martial or a court of
20 inquiry.

21 ~~((+11))~~ (10) "Military judge" means the presiding officer of a
22 general or special court-martial detailed in accordance with RCW
23 38.38.256.

24 ~~((+12))~~ (11) "State judge advocate" means the commissioned judge
25 advocate officer responsible for supervising the administration of the
26 military justice in the organized militia.

27 ~~((+13))~~ (12) "Accuser" means a person who signs and swears to
28 charges, any person who directs that charges nominally be signed and
29 sworn to by another, and any person who has an interest other than an
30 official interest in the prosecution of the accused.

31 ~~((+14))~~ (13) "Military" refers to any or all of the armed forces.

32 ~~((+15))~~ (14) "Convening authority" includes, in addition to the
33 person who convened the court, a commissioned officer commanding for
34 the time being, or a successor in command.

35 ~~((+16))~~ (15) "May" is used in a permissive sense. The words "no
36 person may. . ." mean that no person is required, authorized, or
37 permitted to do the act prescribed.

38 ~~((+17))~~ (16) "Shall" is used in an imperative sense.

1 (~~(18)~~) (17) "Code" means this chapter.
2 (~~(19)~~) (18) "A month's pay" or fraction thereof shall be
3 calculated based upon a member's basic pay entitlement as if the member
4 were serving for a thirty-day period.
5 (19) "Judge advocate" means an officer of the army or air national
6 guard designated as a judge advocate by the judge advocate general of
7 the army or the judge advocate general of the air force.
8 (20) "Military offense" means those offenses listed in RCW
9 38.38.644 through 38.38.800 and sections 25 and 26 of this act.
10 (21) "Nonmilitary offense" means offenses other than those listed
11 in Title 38 RCW.

12 **Sec. 4.** RCW 38.38.008 and 1989 c 48 s 2 are each amended to read
13 as follows:
14 This code applies to all members of the organized militia who are
15 not in federal service pursuant to Title 10 U.S.C.

16 **Sec. 5.** RCW 38.38.024 and 1989 c 48 s 6 are each amended to read
17 as follows:
18 (1) The governor, on the recommendation of the adjutant general,
19 shall appoint (~~(an)~~) a judge advocate officer of the (~~(organized~~
20 ~~militia)~~) army or air national guard as state judge advocate. To be
21 eligible for appointment, an officer must be a member of the bar of the
22 highest court of the state and must have been a member of the bar of
23 the state for at least five years.
24 (2) The adjutant general may appoint as many assistant state judge
25 advocates as he or she considers necessary. To be eligible for
26 appointment, assistant state judge advocates must be officers of the
27 organized militia and members of the bar of the highest court of the
28 state.
29 (3) The state judge advocate or assistants shall make frequent
30 inspections in the field in supervision of the administration of
31 military justice.
32 (4) Convening authorities shall at all times communicate directly
33 with their staff judge advocates in matters relating to the
34 administration of military justice; and the staff judge advocate of any
35 command is entitled to communicate directly with the staff judge

1 advocate of a superior or subordinate command, or with the state judge
2 advocate.

3 (5) No person who has acted as member, law officer, trial counsel,
4 assistant trial counsel, defense counsel, assistant defense counsel, or
5 investigating officer, or who has been a witness for either the
6 prosecution or defense, in any case may later act as staff judge
7 advocate to any reviewing authority upon the same case.

8 (6) No judge advocate may be assigned nonlegal duties unless
9 authorized by the state judge advocate.

10 NEW SECTION. Sec. 6. A new section is added to chapter 38.38 RCW
11 to read as follows:

12 A military judge must be a judge advocate. The adjutant general
13 shall prescribe procedures for certifying, appointing, detailing, and
14 removing military judges.

15 **Sec. 7.** RCW 38.38.080 and 1989 c 48 s 11 are each amended to read
16 as follows:

17 Persons confined other than in a guard house, whether before,
18 during, or after trial by a military court, shall be confined in civil
19 jails, penitentiaries, or prisons designated by the governor or (~~by~~
20 ~~such person as the governor may authorize to act~~) the adjutant
21 general.

22 **Sec. 8.** RCW 38.38.092 and 1989 c 48 s 14 are each amended to read
23 as follows:

24 (1) Under such regulations as may be prescribed (~~under this code~~)
25 by the adjutant general, a person subject to this code (~~who is on~~
26 ~~active state service or inactive duty~~) who is accused of an offense
27 against civil authority may be delivered, upon request, to the civil
28 authority for trial.

29 (2) When delivery under this section is made to any civil authority
30 of a person undergoing sentence of a court-martial, the delivery, if
31 followed by conviction in a civil tribunal, interrupts the execution of
32 the sentence of the court-martial, and the offender after having
33 answered to the civil authorities for the offense shall, upon the
34 request of competent military authority, be returned to military
35 custody for the completion of the sentence.

1 **Sec. 9.** RCW 38.38.132 and 1991 c 43 s 5 are each amended to read
2 as follows:

3 (1) Under such regulations as the governor may prescribe,
4 limitations may be placed on the powers granted by this section with
5 respect to the kind and amount of punishment authorized, the categories
6 of commanding officers and warrant officers exercising command
7 authorized to exercise those powers, the applicability of this section
8 to an accused who demands trial by court-martial, and the kinds of
9 courts-martial to which the case may be referred upon such a demand.
10 However, except in the case of a member attached to or embarked in a
11 vessel, punishment may not be imposed upon any member of the organized
12 militia under this section if the member has, before the imposition of
13 such punishment, demanded trial by court-martial in lieu of such
14 punishment. Under similar regulations, rules may be prescribed with
15 respect to the suspension of punishments authorized hereunder. If
16 authorized by regulations of the governor, a commanding officer
17 exercising general court-martial jurisdiction or an officer of general
18 rank in command may delegate powers under this section to a principal
19 assistant.

20 (2) Subject to subsection (1) of this section, any commanding
21 officer may, in addition to or in lieu of admonition or reprimand,
22 impose one or more of the following disciplinary punishments for minor
23 offenses without the intervention of a court-martial:

24 (a) Upon officers of his or her command:

25 (i) Restriction to certain specified limits, with or without
26 suspension from duty, for not more than fourteen consecutive duty or
27 drill days;

28 (ii) If imposed by an officer exercising general court-martial
29 jurisdiction or an officer of general rank in command:

30 (A) Forfeiture of up to thirty days' pay, but not more than fifteen
31 days' pay per month;

32 (B) Restriction to certain specified limits, with or without
33 suspension from duty, for not more than fourteen consecutive drill or
34 duty days;

35 (C) Detention of up to forty-five days' pay, but not more than
36 fifteen days' pay per month;

37 (b) Upon other personnel of his or her command:

1 (i) If imposed upon a person attached to or embarked in a vessel,
2 confinement for not more than three consecutive days;

3 (ii) Forfeiture of not more than seven days' pay;

4 (iii) Reduction to the next inferior pay grade, if the grade from
5 which demoted is within the promotion authority of the officer imposing
6 the reduction or any officer subordinate to the one who imposes the
7 reduction;

8 (iv) Extra duties, including fatigue or other duties for not more
9 than fourteen duty or drill days, which need not be consecutive, and
10 for not more than two hours per day, holidays included;

11 (v) Restriction to certain specified limits, with or without
12 suspension from duty, for not more than fourteen consecutive days;

13 (vi) Detention of not more than fourteen days' pay;

14 (vii) If imposed by (~~an~~) a commanding officer of the grade of
15 major or above:

16 (A) The punishment authorized in subsection (2)(b)(i) of this
17 section;

18 (B) Forfeiture of up to thirty days' pay, but not more than fifteen
19 days' pay per month;

20 (C) Reduction to the lowest or any intermediate pay grade, if the
21 grade from which demoted is within the promotion authority of the
22 officer imposing the reduction or any officer subordinate to the one
23 who imposes the reduction, but an enlisted member in a pay grade above
24 E-4 may not be reduced more than two pay grades;

25 (D) Extra duties, including fatigue or other duties, for not more
26 than fourteen drill or duty days, which need not be consecutive, and
27 for not more than two hours per day, holidays included;

28 (E) Restriction to certain specified limits, with or without
29 suspension from duty, for not more than fourteen consecutive days;

30 (F) Detention of up to forty-five days' pay, but not more than
31 fifteen days' pay per month.

32 Detention of pay shall be for a stated period of not more than one year
33 but if the offender's term of service expires earlier, the detention
34 shall terminate upon that expiration. Extra duties and restriction may
35 not be combined to run consecutively in the maximum amount imposable
36 for each. Whenever any such punishments are combined to run
37 consecutively, there must be an apportionment. In addition, forfeiture

1 of pay may not be combined with detention of pay without an
2 apportionment.

3 (3) An officer in charge may impose upon enlisted members assigned
4 to the unit of which the officer is in charge such of the punishment
5 authorized under subsection (2)(b) of this section as the governor may
6 specifically prescribe by regulation.

7 (4) The officer who imposes the punishment authorized in subsection
8 (2) of this section, or a successor in command, may, at any time,
9 suspend probationally any part or amount of the unexecuted punishment
10 imposed and may suspend probationally a reduction in grade or a
11 forfeiture imposed under subsection (2) of this section, whether or not
12 executed. In addition, the officer may, at any time, remit or mitigate
13 any part or amount of the unexecuted punishment imposed and may set
14 aside in whole or in part the punishment, whether executed or
15 unexecuted, and restore all rights, privileges, and property affected.
16 The officer may also mitigate reduction in grade to forfeiture or
17 detention of pay. When mitigating extra duties to restriction, the
18 restriction shall not be longer than the number of hours of extra duty
19 that may have been imposed. When mitigating reduction in grade to
20 forfeiture or detention of pay, the amount of the forfeiture or
21 detention shall not be greater than the amount that could have been
22 imposed initially under this section by the officer who imposed the
23 punishment mitigated.

24 (5) A person punished under this section who considers the
25 punishment unjust or disproportionate to the offense may, through the
26 proper channel, appeal to the next superior authority. The appeal
27 shall be promptly forwarded and decided, but the person punished may in
28 the meantime be required to undergo the punishment adjudged. The
29 superior authority may exercise the same powers with respect to the
30 punishment imposed as may be exercised under subsection (4) of this
31 section by the officer who imposed the punishment. Before acting on an
32 appeal from a punishment of:

33 (a) Forfeiture of more than seven days' pay;

34 (b) Reduction of one or more pay grades from the fourth or a higher
35 pay grade;

36 (c) Extra duties for more than ten days;

37 (d) Restriction for more than ten days; or

38 (e) Detention of more than fourteen days' pay;

1 the authority who is to act on the appeal shall refer the case to a
2 judge advocate for consideration and advice, and may so refer the case
3 upon appeal from any punishment imposed under subsection (2) of this
4 section.

5 (6) The imposition and enforcement of disciplinary punishment under
6 this section for any act or omission is not a bar to trial by court-
7 martial for a serious crime or offense growing out of the same act or
8 omission, and not properly punishable under this section; but the fact
9 that a disciplinary punishment has been enforced may be shown by the
10 accused upon trial, and when so shown shall be considered in
11 determining the measure of punishment to be adjudged in the event of a
12 finding of guilty.

13 (7) The governor may by regulation prescribe the form of records to
14 be kept of proceedings under this section and may also prescribe that
15 certain categories of those proceedings shall be in writing.

16 **Sec. 10.** RCW 38.38.180 and 1963 c 220 s 18 are each amended to
17 read as follows:

18 Subject to RCW 38.38.176, general courts_martial have jurisdiction
19 to try persons subject to this code for any offense made punishable by
20 this code and may, under such limitations as the governor may
21 prescribe, adjudge any of the following punishments:

- 22 (1) A fine of not more than (~~two~~) three hundred dollars;
- 23 (2) Forfeiture of pay and allowances;
- 24 (3) A reprimand;
- 25 (4) Dismissal or dishonorable discharge;
- 26 (5) Reduction of a noncommissioned officer to the ranks; or
- 27 (6) Any combination of these punishments.

28 **Sec. 11.** RCW 38.38.188 and 1989 c 48 s 19 are each amended to read
29 as follows:

30 (1) Subject to RCW 38.38.176, summary courts-martial have
31 jurisdiction to try persons subject to this code, except officers for
32 any offense made punishable by this code.

33 (2) No person with respect to whom summary courts-martial have
34 jurisdiction may be brought to trial before a summary court-martial if
35 the person objects thereto, unless under RCW 38.38.132 the person has
36 been permitted and has elected to refuse punishment under that section.

1 If objection to trial by summary court-martial is made by an accused
2 who has been permitted to refuse punishment under RCW 38.38.132, trial
3 shall be ordered by special or general court-martial, as may be
4 appropriate.

5 (3) A summary court-martial may sentence to a fine of not more than
6 twenty-five dollars for a single offense, to forfeiture of (~~pay and~~
7 ~~allowances~~) not more than one-half month's pay for two months, to
8 reduction in rank of enlisted soldiers, and to reduction of a
9 noncommissioned officer to the ranks.

10 **Sec. 12.** RCW 38.38.240 and 1989 c 48 s 22 are each amended to read
11 as follows:

12 In the organized militia not in federal service pursuant to Title
13 10 U.S.C., general courts-martial may be convened by the president or
14 by the governor, or by the (~~commanding general of the national guard~~
15 ~~of the District of Columbia~~) adjutant general.

16 **Sec. 13.** RCW 38.38.244 and 1989 c 48 s 23 are each amended to read
17 as follows:

18 (1) In the organized militia not in federal service pursuant to
19 Title 10 U.S.C., anyone authorized to convene a general court-martial,
20 the commanding officer of a garrison, fort, post, camp, air base,
21 auxiliary air base, or other place where troops are on duty, or of a
22 brigade, regiment, wing, group, detached battalion, separate squadron,
23 or other detached command((~~τ~~)) may convene special courts-martial.
24 Special courts-martial may also be convened by superior authority.
25 When any such officer is an accuser, the court shall be convened by
26 superior competent authority.

27 (2) A special court-martial may not try a commissioned officer.

28 **Sec. 14.** RCW 38.38.248 and 1989 c 48 s 24 are each amended to read
29 as follows:

30 (1) In the organized militia not in federal service pursuant to
31 Title 10 U.S.C., anyone authorized to convene a special court-martial,
32 the commanding officer of a garrison, fort, post, camp, air base,
33 auxiliary air base, or other place where troops are on duty, or of a
34 regiment, wing, group, detached battalion, detached squadron, detached

1 company, or other detachment(~~(7)~~) may convene a summary court-martial
2 consisting of one commissioned officer. The proceedings shall be
3 informal.

4 (2) When only one commissioned officer is present with a command or
5 detachment the commissioned officer shall be the summary court-martial
6 of that command or detachment and shall hear and determine all summary
7 court-martial cases brought before him or her. Summary courts-martial
8 may, however, be convened in any case by superior competent authority
9 when considered desirable.

10 **Sec. 15.** RCW 38.38.312 and 1989 c 48 s 30 are each amended to read
11 as follows:

12 (1) No person subject to this code may compel a person(~~(s)~~) to
13 incriminate (~~((themselves))~~) himself or herself or to answer any question
14 the answer to which may tend to incriminate (~~((them))~~) himself or
15 herself.

16 (2) No person subject to this code may interrogate, or request any
17 statement from, an accused or a person suspected of an offense without
18 first informing the person of the nature of the accusation and advising
19 that the person does not have to make any statement regarding the
20 offense of which he or she is accused or suspected and that any
21 statement made by the person may be used as evidence against him or her
22 in a trial by court-martial.

23 (3) No person subject to this code may compel any person to make a
24 statement or produce evidence before any military tribunal if the
25 statement or evidence is not material to the issue and may tend to
26 degrade the person.

27 (4) No statement obtained from any person in violation of this
28 section, or through the use of coercion, unlawful influence, or
29 unlawful inducement may be received in evidence against the person in
30 a trial by court-martial.

31 **Sec. 16.** RCW 38.38.316 and 1989 c 48 s 31 are each amended to read
32 as follows:

33 (1) No charge or specification may be referred to a general court-
34 martial for trial until a thorough and impartial investigation of all
35 the matters set forth therein has been made. This investigation shall
36 include inquiry as to the truth of the matter set forth in the charges,

1 consideration of the form of charges, and a recommendation as to the
2 disposition which should be made of the case in the interest of justice
3 and discipline.

4 (2) The accused shall be advised of the charges against him or her
5 and of the right to be represented at that investigation by counsel.
6 The accused has a right to be represented at that investigation as
7 provided in RCW 38.38.376 and in regulations prescribed under that
8 section.

9 At that investigation full opportunity shall be given to the
10 accused to cross-examine witnesses against him or her if they are
11 available and to present anything the person may desire in his or her
12 own behalf, either in defense or mitigation, and the investigating
13 officer shall examine available witnesses requested by the accused. If
14 the charges are forwarded after the investigation, they shall be
15 accompanied by a statement of the substance of the testimony taken on
16 both sides and a copy thereof shall be given to the accused.

17 (3) If an investigation of the subject matter of an offense has
18 been conducted before the accused is charged with the offense, and if
19 the accused was present at the investigation and afforded the
20 opportunities for representation, cross-examination, and presentation
21 prescribed in subsection (2) (~~hereof~~) of this section, no further
22 investigation of that charge is necessary under this section unless it
23 is demanded by the accused after being informed of the charge. A
24 demand for further investigation entitles the accused to recall
25 witnesses for further cross-examination and to offer any new evidence
26 in his or her own behalf.

27 (4) If evidence adduced in an investigation under this chapter
28 indicates that the accused committed an uncharged offense, the
29 investigating officer may investigate the subject matter of that
30 offense without the accused having first been charged with the offense
31 if the accused:

32 (a) Is present at the investigation;

33 (b) Is informed of the nature of each uncharged offense
34 investigated; and

35 (c) Is afforded the opportunities for representation, cross-
36 examination, and presentation prescribed in subsection (2) of this
37 section.

1 (5) The requirements of this section are binding on all persons
2 administering this code but failure to follow them does not divest a
3 military court of jurisdiction.

4 **Sec. 17.** RCW 38.38.376 and 1989 c 48 s 37 are each amended to read
5 as follows:

6 (1) The trial counsel of a general or special court-martial shall
7 prosecute in the name of the state, and shall, under the direction of
8 the court, prepare the record of the proceedings.

9 ~~(2) ((The accused has the right to be represented in his or her
10 defense before a general or special court martial by civilian counsel
11 if provided by the accused, or by military counsel of his or her own
12 selection if reasonably available as defined in regulations of the
13 governor, or by the defense counsel detailed under RCW 38.38.260.
14 Should the accused have civilian counsel of his or her own selection,
15 the defense counsel, and assistant defense counsel, if any, who were
16 detailed, shall, if the accused so desires, act as associate counsel;
17 otherwise they shall be excused by the military judge or president of
18 a special court-martial.~~

19 ~~(3) In every court-martial proceeding, the defense counsel may, in
20 the event of conviction, forward for attachment to the record of
21 proceedings a brief of such matters the defense counsel feels should be
22 considered in behalf of the accused on review, including any objection
23 to the contents of the record which he or she considers appropriate and
24 assist the accused in the submission of any matter under RCW 38.38.536.~~

25 ~~(4))~~ The accused has the right to be represented in his or her
26 defense before a general or special court-martial or at an
27 investigation under RCW 38.38.316 as provided in this subsection.

28 (a) The accused may be represented by civilian counsel if provided
29 at his or her own expense.

30 (b) The accused may be represented by:

31 (i) Military counsel detailed under RCW 38.38.260; or

32 (ii) Military counsel of his or her own selection if that counsel
33 is reasonably available, as determined under regulations prescribed
34 under subsection (3) of this section.

35 (c) If the accused is represented by civilian counsel, military
36 counsel detailed or selected under (b) of this subsection shall act as
37 associate counsel unless excused at the request of the accused.

1 (d) Except as provided under (e) of this subsection, if the accused
2 is represented by military counsel of his or her own selection under
3 (b)(ii) of this subsection, any military counsel detailed under (b)(i)
4 of this subsection shall be excused.

5 (e) The accused is not entitled to be represented by more than one
6 military counsel. However, the person authorized under regulations
7 prescribed under RCW 38.38.260 to detail counsel in his or her sole
8 discretion:

9 (i) May detail additional military counsel as assistant defense
10 counsel; and

11 (ii) If the accused is represented by military counsel of his or
12 her own selection under (b)(ii) of this subsection, may approve a
13 request from the accused that military counsel detailed under (b)(i) of
14 this subsection act as associate defense counsel.

15 (3) The state judge advocate shall, by regulation, define
16 "reasonably available" for the purpose of subsection (2) of this
17 section and establish procedures for determining whether the military
18 counsel selected by an accused under subsection (2) of this section is
19 reasonably available.

20 (4) In any court-martial proceeding resulting in a conviction, the
21 defense counsel:

22 (a) Shall forward for attachment to the record of proceedings a
23 brief of such matters as he or she determines should be considered in
24 behalf of the accused on review, including any objection to the
25 contents of the record which he or she considers appropriate;

26 (b) Shall assist the accused in the submission of any matter under
27 RCW 38.38.536; and

28 (c) May take other action authorized by this chapter.

29 (5) An assistant trial counsel of a general court-martial may,
30 under the direction of the trial counsel or when qualified to be a
31 trial counsel as required by RCW 38.38.260, perform any duty imposed by
32 law, regulation, or the custom of the service upon the trial counsel of
33 the court. An assistant trial counsel of a special court-martial may
34 perform any duty of the trial counsel.

35 ~~((+5))~~ (6) An assistant defense counsel of a general or special
36 court-martial may, under the direction of the defense counsel or when
37 qualified to be the defense counsel as required by RCW 38.38.260,

1 perform any duty imposed by law, regulation, or the custom of the
2 service upon counsel for the accused.

3 **Sec. 18.** RCW 38.38.388 and 1989 c 48 s 40 are each amended to read
4 as follows:

5 (1) The military judge and members of a general or special court-
6 martial may be challenged by the accused or the trial counsel for cause
7 stated to the court. The military judge or, if none, the court shall
8 determine the relevance and validity of challenges for cause and may
9 not receive a challenge to more than one person at a time. Challenges
10 by the trial counsel shall ordinarily be presented and decided before
11 those by the accused are offered.

12 (2) If exercise of a challenge for cause reduces the court below
13 the minimum number of members required by RCW 38.38.172, all parties
14 shall, notwithstanding RCW 38.38.268, either exercise or waive any
15 challenge for cause then apparent against the remaining members of the
16 court before additional members are detailed to the court. However,
17 peremptory challenges shall not be exercised at that time.

18 (3) Each accused and the trial counsel is entitled to one
19 peremptory challenge, but the military judge may not be challenged
20 except for cause.

21 (4) If exercise of a peremptory challenge reduces the court below
22 the minimum number of members required by RCW 38.38.172, the parties
23 shall, notwithstanding RCW 38.38.268, either exercise or waive any
24 remaining peremptory challenge, that has not been previously waived,
25 against the remaining members of the court before additional members
26 are detailed to the court.

27 (5) Whenever additional members are detailed to the court, and
28 after any challenges for cause against such additional members are
29 presented and decided, each accused and the trial counsel are entitled
30 to one peremptory challenge against members not previously subject to
31 peremptory challenge.

32 **Sec. 19.** RCW 38.38.396 and 1989 c 48 s 42 are each amended to read
33 as follows:

34 (1) A person charged with desertion or absence without leave in
35 time of war, or with aiding the enemy or with mutiny may be tried and
36 punished at any time without limitation.

1 (2) Except as otherwise provided in this section, a person charged
2 with desertion in time of peace or with the offense punishable under
3 RCW 38.38.784 is not liable to be tried by court-martial if the offense
4 was committed more than (~~three~~) five years before the receipt of
5 sworn charges and specifications by an officer exercising summary
6 court-martial jurisdiction over the command.

7 (3) Except as otherwise provided in this section, a person charged
8 with any offense is not liable to be tried by court-martial or punished
9 under RCW 38.38.132 if the offense was committed more than (~~two~~)
10 three years before the receipt of sworn charges and specifications by
11 an officer exercising summary court-martial jurisdiction over the
12 command or before the imposition of punishment under RCW 38.38.132.

13 (4) A person charged with an offense is not liable to be punished
14 under RCW 38.38.132 if the offense was committed more than two years
15 before the imposition of punishment.

16 (5) Periods in which the accused was absent from territory in which
17 the state has the authority to apprehend the accused, or in the custody
18 of civil authorities, or in the hands of the enemy, shall be excluded
19 in computing the period of limitation prescribed in this section.

20 (6) If charges or specifications are dismissed as defective or
21 insufficient for any cause and the period prescribed by the applicable
22 statute of limitations:

23 (a) Has expired; or

24 (b) Will expire within one hundred eighty days after the date of
25 dismissal of the charges and specifications
26 trial and punishment under new charges and specifications are not
27 barred by the statute of limitations if the conditions specified in
28 subsection (7) of this section are met.

29 (7) The conditions referred to in subsection (6) of this section
30 are that the new charges and specifications must:

31 (a) Be received by an officer exercising summary court-martial
32 jurisdiction over the command within one hundred eighty days after the
33 dismissal of the charges or specifications; and

34 (b) Allege the same acts or omissions that were alleged in the
35 dismissed charges or specifications or allege acts or omissions that
36 were included in the dismissed charges or specifications.

1 **Sec. 20.** RCW 38.38.408 and 1989 c 48 s 45 are each amended to read
2 as follows:

3 (1) The trial counsel, the defense counsel, and the court-martial
4 shall have equal opportunity to obtain witnesses and other evidence in
5 accordance with such regulations as the governor may prescribe.

6 (2) The president of a special court-martial, military judge,
7 military magistrate, or a summary court officer may:

8 (a) Issue a warrant for the arrest of any accused person who,
9 having been served with a warrant and a copy of the charges, disobeys
10 a written order by the convening authority to appear before the court;

11 (b) Issue subpoenas duces tecum and other subpoenas;

12 (c) Enforce by attachment the attendance of witnesses and the
13 production of books and papers; and

14 (d) Sentence for refusal to be sworn or to answer, as provided in
15 actions before civil courts of the state.

16 (3) Process issued in court-martial cases to compel witnesses to
17 appear and testify and to compel the production of other evidence shall
18 run to any part of the state and shall be executed by civil officers as
19 prescribed by the laws of the state.

20 **Sec. 21.** RCW 38.38.412 and 1989 c 48 s 46 are each amended to read
21 as follows:

22 (1) Any person not subject to this code who:

23 (a) Has been duly subpoenaed to appear as a witness or to produce
24 books and records before a court-martial, military commission, court of
25 inquiry, or any other military court or board, or before any military
26 or civil officer designated to take a deposition to be read in evidence
27 before such a court, commission, or board;

28 (b) Has been duly paid or tendered the fees and mileage of a
29 witness at the rates allowed to witnesses attending the superior court
30 of the state; and

31 (c) Willfully neglects or refuses to appear, or refuses to qualify
32 as a witness or to testify or to produce any evidence which that person
33 may have been legally subpoenaed to produce;
34 is guilty of an offense against the state.

35 (2) Any person who commits an offense named in subsection (1) of
36 this section shall be tried before the superior court of this state
37 having jurisdiction and jurisdiction is conferred upon those courts for

1 that purpose. Upon conviction, such a person shall be punished by a
2 fine of not more than five hundred dollars, or imprisonment for not
3 more than six months, or both.

4 (3) The prosecuting attorney in any such court, upon the
5 certification of the facts by the military court, commission, court of
6 inquiry, or board, shall prosecute any person violating this section.

7 **Sec. 22.** RCW 38.38.624 and 1963 c 220 s 75 are each amended to
8 read as follows:

9 No person may be tried or punished for any offense provided for in
10 RCW 38.38.628 through 38.38.800, unless (~~it was committed while he was~~
11 ~~in a duty status~~) he or she was a member of the organized militia at
12 the time of the offense.

13 **Sec. 23.** RCW 38.38.752 and 1963 c 220 s 107 are each amended to
14 read as follows:

15 Any person subject to this code who(~~, while in a duty status,~~)
16 willfully or recklessly wastes, spoils, or otherwise willfully and
17 wrongfully destroys or damages any property other than military
18 property of the United States or of the state shall be punished as a
19 court-martial may direct.

20 **Sec. 24.** RCW 38.38.760 and 1963 c 220 s 109 are each amended to
21 read as follows:

22 (~~Any person subject to this code who operates any vehicle while~~
23 ~~drunk, or in a reckless or wanton manner, shall be punished as a court~~
24 ~~martial may direct.~~)

25 (1) Any person subject to this code who:

26 (a) Operates or physically controls any vehicle, aircraft, or
27 vessel in a reckless or wanton manner or while impaired by a substance
28 described in section 25; or

29 (b) Operates or is in actual physical control of any vehicle,
30 aircraft, or vessel while drunk or when the alcohol concentration in
31 the person's blood or breath is equal to or exceeds the applicable
32 limit under subsection (2) of this section; or

33 (c) Operates or is in actual physical control of any vehicle,
34 aircraft, or vessel in a reckless or wanton manner
35 shall be punished as a court-martial may direct.

1 (2) For purposes of subsection (1) of this section, the blood
2 alcohol content limit with respect to alcohol concentration in a
3 person's blood is 0.08 grams of alcohol per one hundred milliliters of
4 blood and with respect to alcohol concentration in a person's breath is
5 0.08 grams of alcohol per two hundred ten liters of breath, as shown by
6 chemical analysis.

7 (3) For purposes of this section, "blood alcohol content limit"
8 means the amount of alcohol concentration in a person's blood or breath
9 at which operation or control of a vehicle, aircraft, or vessel is
10 prohibited.

11 NEW SECTION. Sec. 25. A new section is added to chapter 38.38 RCW
12 to read as follows:

13 (1) Any person subject to this code who wrongfully uses, possesses,
14 distributes, or introduces into an installation, vessel, vehicle, or
15 aircraft used by or under the control of the armed forces or organized
16 militia a substance described in subsection (2) of this section shall
17 be punished as a court-martial may direct.

18 (2) The substances referred to in subsection (1) of this section
19 are the following:

20 (a) Opium, heroin, cocaine, amphetamine, lysergic acid
21 diethylamide, methamphetamine, phencyclidine, barbituric acid, and
22 marijuana and any compound or derivative of any such substance;

23 (b) Any substance not specified in (a) of this subsection that is
24 listed on a schedule of controlled substances prohibited by the United
25 States army; or

26 (c) Any other substance not specified in this subsection that is
27 listed in Schedules I through V of section 202 of the federal
28 controlled substances act, 21 U.S.C. Sec. 812, as amended.

29 NEW SECTION. Sec. 26. A new section is added to chapter 38.38 RCW
30 to read as follows:

31 Any person subject to this code who attempts or offers with
32 unlawful force or violence to do bodily harm to another member of the
33 organized militia, whether or not the attempt or offer is consummated,
34 is guilty of assault and shall be punished as a court-martial may
35 direct.

1 **Sec. 27.** RCW 38.38.800 and 1989 c 48 s 71 are each amended to read
2 as follows:

3 Though not specifically mentioned in this code, all disorders and
4 neglects to the prejudice of good order and discipline in the organized
5 militia, of which persons subject to this code may be guilty, shall be
6 taken cognizance of by a general, special or summary court-martial,
7 according to the nature and degree of the offense, and shall be
8 punished at the discretion of that court. However, cognizance may not
9 be taken of, and jurisdiction may not be extended to, the crimes of
10 murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion,
11 assault in the first degree, burglary, or housebreaking, jurisdiction
12 of which is reserved to civil courts.

13 **Sec. 28.** RCW 38.38.840 and 1989 c 48 s 72 are each amended to read
14 as follows:

15 (1) Courts of inquiry to investigate any matter may be convened by
16 the governor, the adjutant general, or by any other person designated
17 by the governor for that purpose, whether or not the persons involved
18 have requested such an inquiry: PROVIDED, That upon the request of the
19 officer involved such an inquiry shall be instituted as hereinabove set
20 forth.

21 (2) A court of inquiry consists of three or more commissioned
22 officers. For each court of inquiry the convening authority shall also
23 appoint counsel for the court.

24 (3) Any person subject to this code whose conduct is subject to
25 inquiry shall be designated as a party. Any person subject to this
26 code or employed in the state military department, who has a direct
27 interest in the subject of inquiry has the right to be designated as a
28 party upon request to the court. Any person designated as a party
29 shall be given due notice and has the right to be present, to be
30 represented by counsel, to cross-examine witnesses, and to introduce
31 evidence.

32 (4) Members of a court of inquiry may be challenged by a party, but
33 only for cause stated to the court.

34 (5) The members, counsel, the reporter, and interpreters of courts
35 of inquiry shall take an oath or affirmation to faithfully perform
36 their duties.

1 (6) Witnesses may be summoned to appear and testify and be examined
2 before courts of inquiry, as provided for courts-martial.

3 (7) Courts of inquiry shall make findings of fact but may not
4 express opinions or make recommendations unless required to do so by
5 the convening authority.

6 (8) Each court of inquiry shall keep a record of its proceedings,
7 which shall be authenticated by the signatures of the president and
8 counsel for the court and forwarded to the convening authority. If the
9 record cannot be authenticated by the president, it shall be signed by
10 a member in lieu of the president. If the record cannot be
11 authenticated by the counsel for the court, it shall be signed by a
12 member in lieu of the counsel.

13 **Sec. 29.** RCW 38.38.844 and 1989 c 48 s 73 are each amended to read
14 as follows:

15 (1) The following members of the organized militia may administer
16 oaths for the purposes of military administration, including military
17 justice, and affidavits may be taken for those purposes before persons
18 having the general powers of a notary public:

19 (a) The state judge advocate and all assistant state judge
20 advocates;

21 (b) All law specialists or paralegals;

22 (c) All summary courts-martial;

23 (d) All adjutants, assistant adjutants, acting adjutants, and
24 personnel adjutants;

25 (e) The military judge, president, trial counsel, and assistant
26 trial counsel for all general and special courts-martial;

27 (f) The president and the counsel for the court of any court of
28 inquiry;

29 (g) All officers designated to take a deposition;

30 (h) All commanding officers of units of the organized militia;

31 (i) All officers of the organized militia designated as recruiting
32 officers;

33 (j) All persons detailed to conduct an investigation; and

34 ~~((+i))~~ (k) All other persons designated by regulations of the
35 ~~((governor))~~ adjutant general.

36 (2) ~~((Officers of the organized militia may not be authorized to~~

1 ~~administer oaths as provided in this section unless they are on active~~
2 ~~state service or inactive duty for training in or with those forces~~
3 ~~under orders of the governor as prescribed in this code.~~

4 ~~(3))~~ The signature without seal of any such person, together with
5 the title of the person's office, is prima facie evidence of the
6 person's authority.

7 **Sec. 30.** RCW 38.38.848 and 1989 c 48 s 74 are each amended to read
8 as follows:

9 (1) RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132,
10 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through
11 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained
12 to every enlisted member:

13 (a) ~~At~~ the time of the member's enlistment or transfer or induction
14 ~~((into, or))~~;

15 (b) ~~At~~ the time of the member's order to duty in or with any of the
16 organized militia; or

17 (c) Within ~~((thirty))~~ forty days thereafter. ~~((They))~~

18 (2) ~~These sections~~ shall also be explained ~~((annually to each unit~~
19 ~~of the organized militia))~~ again to each member of the organized
20 militia each time a member of the organized militia reenlists or
21 extends his or her enlistment.

22 (3) A complete text of this code and of the regulations prescribed
23 by the governor thereunder shall be made available to any member of the
24 organized militia, upon request, for personal examination.

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