

## CHAPTER 48

[House Bill No. 1062]

## CODE OF MILITARY JUSTICE—REVISED PROVISIONS

AN ACT Relating to the Washington code of military justice; amending RCW 38.38.004, 38.38.008, 38.38.012, 38.38.016, 38.38.020, 38.38.024, 38.38.064, 38.38.068, 38.38.072, 38.38.076, 38.38.080, 38.38.084, 38.38.088, 38.38.092, 38.38.132, 38.38.172, 38.38.176, 38.38.184, 38.38.188, 38.38.196, 38.38.200, 38.38.240, 38.38.244, 38.38.248, 38.38.252, 38.38.256, 38.38.260, 38.38.268, 38.38.308, 38.38.312, 38.38.316, 38.38.320, 38.38.324, 38.38.328, 38.38.368, 38.38.372, 38.38.376, 38.38.380, 38.38.384, 38.38.388, 38.38.392, 38.38.396, 38.38.400, 38.38.404, 38.38.408, 38.38.412, 38.38.420, 38.38.428, 38.38.432, 38.38.440, 38.38.484, 38.38.488, 38.38.492, 38.38.532, 38.38.540, 38.38.556, 38.38.564, 38.38.568, 38.38.572, 38.38.580, 38.38.652, 38.38.656, 38.38.660, 38.38.684, 38.38.688, 38.38.716, 38.38.720, 38.38.756, 38.38.772, 38.38.788, 38.38.800, 38.38.840, 38.38.844, 38.38.848, 38.38.852, 38.38.856, 38.38.860, 38.38.864, and 38.38.868; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 220, Laws of 1963 and RCW 38.38.004 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) (~~"State military forces"~~) "Organized militia" means the national guard of the state, as defined in section 101(3) of title 32, United States Code, (~~(the organized naval militia of the state;)~~) and any other military force organized under the laws of the state of Washington (~~(and shall be analogous to "organized militia" as defined in RCW 38.04.010).~~).

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

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

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

(5) "Superior commissioned officer" means a commissioned officer superior in rank (~~(and)~~) or command.

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

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

(8) "Rank" means the order of precedence among members of the (~~(state military forces)~~) organized militia.

(9) (~~"Active state duty" means full-time duty in the active military service of the state under an order of the governor issued under authority vested in him by law, and includes travel to and from such duty;)~~) The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

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

~~((10)) "Duty status other than active state duty" means and includes any periods of drill and such other training and service not requiring the entire time of the organization or person as may be required under state or federal laws, regulations or orders, and includes travel to and from such duty.~~

~~((11)) "Military court" means a court-martial(;) or a court of inquiry(, or a provost court).~~

~~((12)) "Law officer" means an official) (11) "Military judge" means the presiding officer of a general or special court-martial detailed in accordance with RCW 38.38.256.~~

~~((13)) "Law specialist" means a commissioned officer of the organized naval militia of the state designated for special duty (law).~~

~~((14)) "Legal officer" means any commissioned officer of the organized naval militia of the state designated to perform legal duties for a command.~~

~~((15))~~ (12) "State judge advocate" means the commissioned officer responsible for supervising the administration of the military justice in the ((state military forces)) organized militia.

~~((16))~~ (13) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.

~~((17))~~ (14) "Military" refers to any or all of the armed forces.

~~((18))~~ (15) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

~~((19))~~ (16) "May" is used in a permissive sense. The words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

~~((20))~~ (17) "Shall" is used in an imperative sense.

~~((21))~~ (18) "Code" means this chapter.

(19) "A month's pay" or fraction thereof shall be calculated based upon a member's basic pay entitlement as if the member were serving for a thirty-day period.

Sec. 2. Section 2, chapter 220, Laws of 1963 and RCW 38.38.008 are each amended to read as follows:

This code applies to all members of the ~~((state military forces))~~ organized militia who are not in federal service.

Sec. 3. Section 3, chapter 220, Laws of 1963 and RCW 38.38.012 are each amended to read as follows:

~~((2))~~ No person who has deserted from the ~~((state military forces))~~ organized militia may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

Sec. 4. Section 4, chapter 220, Laws of 1963 and RCW 38.38.016 are each amended to read as follows:

(1) If any commissioned officer, dismissed by order of the governor, makes a written application for trial by court-martial, setting forth, under oath, that he or she has been wrongfully dismissed, the governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which ~~((he))~~ the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and ~~((he))~~ the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which ~~((he))~~ the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(2) If the governor fails to convene a general court-martial within six months from the presentation of an application for trial under this code, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(3) If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the governor, that former officer would have attained had ~~((he))~~ the officer not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(4) If an officer is discharged from the organized militia by administrative action or by board proceedings under law, or is dropped from the rolls by order of the governor, ~~((he))~~ the officer has no right to trial under this section.

Sec. 5. Section 5, chapter 220, Laws of 1963 and RCW 38.38.020 are each amended to read as follows:

(1) This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the ~~((state military forces))~~ organized militia while those units are

serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

Sec. 6. Section 6, chapter 220, Laws of 1963 and RCW 38.38.024 are each amended to read as follows:

(1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the ~~((state military forces))~~ organized militia as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the ~~((state military forces))~~ organized militia and members of the bar of the highest court of the state.

(3) The state judge advocate or ~~((his))~~ assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(4) Convening authorities shall at all times communicate directly with their staff judge advocates ~~((or legal officer))~~ in matters relating to the administration of military justice; and the staff judge advocate ~~((or legal officer))~~ of any command is entitled to communicate directly with the staff judge advocate ~~((or legal officer))~~ of a superior or subordinate command, or with the state judge advocate.

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

Sec. 7. Section 7, chapter 220, Laws of 1963 and RCW 38.38.064 are each amended to read as follows:

(1) Apprehension is the taking of a person into custody.

(2) Any person authorized by this code, or by regulations issued under it, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) Commissioned officers, warrant officers, ~~((petty officers))~~ and non-commissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein.

Sec. 8. Section 8, chapter 220, Laws of 1963 and RCW 38.38.068 are each amended to read as follows:

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state of Washington (~~((military forces))~~) organized militia and deliver ~~((him))~~ the offender into the custody of the state of Washington (~~((military forces))~~) organized militia. If an offender is apprehended outside of the state of Washington, ~~((his))~~ the return to the area must be in accordance with normal extradition procedures or reciprocal agreement.

Sec. 9. Section 9, chapter 220, Laws of 1963 and RCW 38.38.072 are each amended to read as follows:

(1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing ~~((him))~~ the person to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers(~~(, petty officers,)~~) or noncommissioned officers to order enlisted members of ~~((his))~~ the officer's command or subject to ~~((his))~~ the officer's authority into arrest or confinement.

(3) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority ~~((he))~~ the officer is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(4) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(5) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Sec. 10. Section 10, chapter 220, Laws of 1963 and RCW 38.38.076 are each amended to read as follows:

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform ~~((him))~~ the person of the specific wrong of which he or she is accused and to try ~~((him))~~ the person or to dismiss the charges and release ~~((him))~~ the person.

Sec. 11. Section 11, chapter 220, Laws of 1963 and RCW 38.38.080 are each amended to read as follows:

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

Sec. 12. Section 12, chapter 220, Laws of 1963 and RCW 38.38.084 are each amended to read as follows:

(1) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under RCW 38.38.080, may refuse to receive or keep any prisoner committed to his or her charge, when the committing person furnishes a statement, signed by ~~((him))~~ the committing person, of the offense charged against the prisoner.

(2) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under RCW 38.38.080, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against ~~((him))~~ the prisoner, and the name of the person who ordered or authorized the commitment.

Sec. 13. Section 13, chapter 220, Laws of 1963 and RCW 38.38.088 are each amended to read as follows:

Subject to RCW 38.38.488, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against ~~((him))~~ the person, nor shall the arrest or confinement imposed upon ~~((him))~~ the person be any more rigorous than the circumstances require to insure his or her presence, but ~~((he))~~ the person may be subjected to minor punishment during that period for infractions of discipline.

Sec. 14. Section 14, chapter 220, Laws of 1963 and RCW 38.38.092 are each amended to read as follows:

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

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

Sec. 15. Section 15, chapter 220, Laws of 1963 and RCW 38.38.132 are each amended to read as follows:

~~((1) Under such regulations as the governor may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court martial:~~

~~(a) Upon officer of his command:~~

~~(i) Withholding of privileges for not more than two consecutive weeks;~~

~~(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or~~

~~(iii) If imposed by the governor, the commanding officer of a force of the state military forces, or the commanding general of a division, a fine or forfeiture of pay and allowances of not more than seventy-five dollars;~~

~~(b) Upon other military personnel of his command:~~

~~(i) Withholding of privileges for not more than two consecutive weeks;~~

~~(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;~~

~~(iii) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included;~~

~~(iv) Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command;~~

~~(v) If imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or~~

~~(vi) If imposed by an officer exercising special court martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than ten dollars.~~

~~(2) The governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.~~

~~(3) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the governor may by regulation specifically prescribe, as provided in subsections (1) and (2) of this section.~~

~~(4) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected.~~

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

~~(6) Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after the date that punishment is imposed and to any pay and allowances accrued before that date:)~~

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

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

(a) Upon officers of his or her command:

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

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

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

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

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

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



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

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

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

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

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

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

(vii) If imposed by an officer of the grade of major or above:

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

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

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

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

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

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

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. Extra duties and restriction may not be combined to run consecutively in the maximum amount imposable for each. Whenever any such punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment.

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

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition,

the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating extra duties to restriction, the mitigated punishment shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

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

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

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

(c) Extra duties for more than ten days;

(d) Restriction for more than ten days; or

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

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

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

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

Sec. 16. Section 16, chapter 220, Laws of 1963 and RCW 38.38.172 are each amended to read as follows:

(1) In the ~~((state military forces))~~ organized militia not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(2) The three kinds of courts-martial are:

(a) General courts-martial, consisting of a ~~((law officer))~~ military judge and not less than five members, or only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of not less than three members, or a military judge and not less than three members, or only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in (a) of this subsection so requests; and

(c) Summary courts-martial, consisting of one commissioned officer.

Sec. 17. Section 17, chapter 220, Laws of 1963 and RCW 38.38.176 are each amended to read as follows:

Each force of the ~~((state military forces))~~ organized militia has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor.

Sec. 18. Section 19, chapter 220, Laws of 1963 and RCW 38.38.184 are each amended to read as follows:

Subject to RCW 38.38.176, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may be punished under this code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense. A dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under RCW 38.38.260 was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

Sec. 19. Section 20, chapter 220, Laws of 1963 and RCW 38.38.188 are each amended to read as follows:

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

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

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

(3) A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks.

Sec. 20. Section 22, chapter 220, Laws of 1963 and RCW 38.38.196 are each amended to read as follows:

A dishonorable discharge(~~(-bad conduct discharge)~~) or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made.

Sec. 21. Section 23, chapter 220, Laws of 1963 and RCW 38.38.200 are each amended to read as follows:

In the (~~(state military forces)~~) organized militia not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

Sec. 22. Section 24, chapter 220, Laws of 1963 and RCW 38.38.240 are each amended to read as follows:

In the (~~(state military forces)~~) organized militia not in federal service, general courts-martial may be convened by the president or by the governor, or by the commanding general of the national guard of the District of Columbia.

Sec. 23. Section 25, chapter 220, Laws of 1963 and RCW 38.38.244 are each amended to read as follows:

(1) In the (~~(state military forces)~~) organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

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

Sec. 24. Section 26, chapter 220, Laws of 1963 and RCW 38.38.248 are each amended to read as follows:

(1) In the (~~(state military forces)~~) organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment (~~(he)~~) the commissioned officer shall be the summary court-martial of that command or detachment and shall hear and determine all

summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable (~~by him~~).

Sec. 25. Section 27, chapter 220, Laws of 1963 and RCW 38.38.252 are each amended to read as follows:

(1) Any commissioned officer of or on duty with the (~~state military forces~~) organized militia is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(2) Any warrant officer of or on duty with the (~~state military forces~~) organized militia is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(3) (a) Any enlisted member of the (~~state military forces~~) organized militia who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but (~~he~~) shall serve as a member of a court only if, before the (~~convening of the court~~) conclusion of a session called by the military judge under RCW 38.38.380(1) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this section, the word "unit" means any regularly organized body of the (~~state military forces~~) organized militia not larger than a company, a squadron, (~~a division of the naval militia;~~) or a body corresponding to one of them.

(4) (a) When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to (~~him~~) the person in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when (~~he~~) the member is the accuser or a witness for the prosecution or has acted as investigating

~~officer or as counsel in the same case. ((If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade, the convening authority shall appoint him as president of a special court-martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction:))~~

(c) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the governor may prescribe, the convening authority may delegate his or her authority under this subsection to the staff judge advocate or to any other principal assistant.

Sec. 26. Section 28, chapter 220, Laws of 1963 and RCW 38.38.256 are each amended to read as follows:

~~((1) The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of the highest court of the state, or a member of the bar of a federal court, and who is certified to be qualified for such duty by the state judge advocate. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.~~

~~(2) The law officer may not consult with the members of the court, other than on the form of the findings as provided in RCW 38.38.380, except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court:))~~

(1) A military judge shall be detailed to each general court-martial. Subject to regulations of the governor, a military judge may be detailed to any special court-martial. The governor shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he or she has been detailed.

(2) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a federal court or a member of the bar of the highest court of a state and who is certified to be qualified for duty as a military judge by the state judge advocate.

(3) The military judge of a general court-martial shall be designated by the state judge advocate or a designee for detail in accordance with regulations prescribed under subsection (1) of this section. Unless the court-martial was convened by the governor, neither the convening authority nor any member of the staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general

court-martial may perform such duties only when he or she is assigned and directly responsible to the state judge advocate or designee, and may perform duties of a judicial or nonjudicial nature other than those relating to the primary duty as a military judge of a general court-martial when such duties are assigned by or with the approval of the state judge advocate or designee.

(4) No person is eligible to act as military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may the military judge vote with the members of the court.

Sec. 27. Section 29, chapter 220, Laws of 1963 and RCW 38.38.260 are each amended to read as follows:

~~((1) For each general and special court martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.~~

~~(2) Trial counsel or defense counsel detailed for a general court martial:~~

~~(a) Must be a person who is a member of the bar of the highest court of the state, or a member of the bar of a federal court, and~~

~~(b) Must be certified as competent to perform such duties by the state judge advocate.~~

~~(3) In the case of a special court martial:~~

~~(a) If the trial counsel is qualified to act as counsel before a general court martial, the defense counsel detailed by the convening authority must be a person similarly qualified, and~~

~~(b) If the trial counsel is a member of the bar of the highest court of the state, the defense counsel detailed by the convening authority must be one of the foregoing.)~~

(1) (a) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The governor shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(b) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court-martial:

(a) Must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a federal court or of the highest court of a state, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the state judge advocate.

(3) In the case of a special court-martial:

(a) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under RCW 38.38.260(2) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(b) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(c) If the trial counsel is a judge advocate or a member of the bar of a federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

Sec. 28. Section 31, chapter 220, Laws of 1963 and RCW 38.38.268 are each amended to read as follows:

~~((1) No member of a general or special court martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause:~~

~~(2) Whenever a general court martial is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel:~~



~~(3) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial shall proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.)~~

(1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of RCW 38.38.172 (2) (a) or (b), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

Sec. 29. Section 32, chapter 220, Laws of 1963 and RCW 38.38.308 are each amended to read as follows:

(1) Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(b) That they are true in fact to the best of his or her knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him or her as soon as practicable.

Sec. 30. Section 33, chapter 220, Laws of 1963 and RCW 38.38.312 are each amended to read as follows:

(1) No person subject to this code may compel ~~((any))~~ persons to incriminate ~~((himself))~~ themselves or to answer any question the answer to which may tend to incriminate ~~((him))~~ them.

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

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

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

Sec. 31. Section 34, chapter 220, Laws of 1963 and RCW 38.38.316 are each amended to read as follows:

(1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of ~~((his))~~ the right to be represented at that investigation by counsel. ~~((Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court martial jurisdiction over the command.))~~ The accused has a right to be represented at that investigation as provided in RCW 38.38.376 and in regulations prescribed under that section.

At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to

present anything (~~(he)~~) the person may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

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

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

Sec. 32. Section 35, chapter 220, Laws of 1963 and RCW 38.38.320 are each amended to read as follows:

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the governor. If that is not practicable, (~~(he)~~) the officer shall report in writing to the governor the reasons for delay.

Sec. 33. Section 36, chapter 220, Laws of 1963 and RCW 38.38.324 are each amended to read as follows:

(1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he or she has found that the charge alleges an offense under this code (~~(and)~~), is warranted by evidence indicated in the report of the investigation under RCW 38.38.316, if there is such a report, and the court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the staff judge advocate under subsection (1) of this section with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(a) Expressing conclusions with respect to each matter set forth in subsection (1) of this section; and

(b) Recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the state judge advocate shall accompany the specification.

~~((2))~~ (3) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

Sec. 34. Section 37, chapter 220, Laws of 1963 and RCW 38.38.328 are each amended to read as follows:

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his or her objection, be brought to trial ~~((before))~~ or be required to participate by himself or counsel in a session called by a military judge under RCW 38.38.380(1), in a general court-martial within a period of five days after the service of the charges upon him or her, or before a special court-martial within a period of three days after the service of the charges upon him or her.

Sec. 35. Section 38, chapter 220, Laws of 1963 and RCW 38.38.368 are each amended to read as follows:

The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the governor by regulations, which shall, so far as ~~((he))~~ the governor considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code.

Sec. 36. Section 39, chapter 220, Laws of 1963 and RCW 38.38.372 are each amended to read as follows:

(1) No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, ~~((law officer))~~ military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his or her functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to ~~((his))~~ judicial acts. The foregoing provisions of this section shall not apply with respect to (a) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (b) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the organized militia, or in determining whether a member of the organized militia should be retained on active duty, no person subject to this chapter may, in preparing any such report (a) consider or evaluate the performance of duty of any such member of a court-martial, or (b) give a less favorable rating or evaluation of any member of the organized militia because of the zeal with which such member, as counsel, represented any accused before a court-martial.

Sec. 37. Section 40, chapter 220, Laws of 1963 and RCW 38.38.376 are each amended to read as follows:

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

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

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

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when ~~((he is))~~ qualified to be a trial counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when ~~((he is))~~ qualified to be the defense counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Sec. 38. Section 41, chapter 220, Laws of 1963 and RCW 38.38.380 are each amended to read as follows:

~~((Whenever a general or special court martial deliberates or votes, only the members of the court may be present. After a general court martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in general court martial cases, the law officer.))~~

(1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to RCW 38.38.328, call the court into session without the presence of the members for the purpose of:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) Holding the arraignment and receiving the pleas of the accused;  
and

(d) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to RCW 38.38.368 and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(2) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

Sec. 39. Section 42, chapter 220, Laws of 1963 and RCW 38.38.384 are each amended to read as follows:

((A court martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.)) The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just.

Sec. 40. Section 43, chapter 220, Laws of 1963 and RCW 38.38.388 are each amended to read as follows:

~~((1) Members of a general or special court martial and the law officer of a general court martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.~~

~~(2) Each accused and the trial counsel is entitled to one preemptory challenge, but the law officer may not be challenged except for cause.))~~

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

(2) Each accused and the trial counsel is entitled to one preemptory challenge, but the military judge may not be challenged except for cause.

Sec. 41. Section 44, chapter 220, Laws of 1963 and RCW 38.38.392 are each amended to read as follows:

~~((1) The law officer, interpreters, and, in general and special courts martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.~~

~~(2) Each witness before a military court shall be examined on oath or affirmation.))~~

(1) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the governor. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person, is detailed to that duty.

(2) Each witness before a court-martial shall be examined on oath.

Sec. 42. Section 45, chapter 220, Laws of 1963 and RCW 38.38.396 are each amended to read as follows:

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

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

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

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

Sec. 43. Section 46, chapter 220, Laws of 1963 and RCW 38.38.400 are each amended to read as follows:

(1) No person may, without ~~((his))~~ the person's consent, be tried a second time in any military court of the state for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section.

Sec. 44. Section 47, chapter 220, Laws of 1963 and RCW 38.38.404 are each amended to read as follows:

(1) If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that ~~((he))~~ the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if ~~((he))~~ the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though ~~((he))~~ the accused had pleaded not guilty.

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the



charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as through the accused had pleaded not guilty.

Sec. 45. Section 48, chapter 220, Laws of 1963 and RCW 38.38.408 are each amended to read as follows:

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

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

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

(b) Issue subpoenas duces tecum and other subpoenas;

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

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

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

Sec. 46. Section 49, chapter 220, Laws of 1963 and RCW 38.38.412 are each amended to read as follows:

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

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

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

(c) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state (~~(and a military court may punish him in the same manner as the civil courts of the state)~~).

(2) Any person who commits an offense named in subsection (1) of this section shall be tried before the superior court of this state having jurisdiction and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both.

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

Sec. 47. Section 51, chapter 220, Laws of 1963 and RCW 38.38.420 are each amended to read as follows:

(1) At any time after charges have been signed, as provided in RCW 38.38.308, any party may take oral or written depositions unless a military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(a) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing;

(b) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(c) That the present whereabouts of the witness is unknown.

Sec. 48. Section 53, chapter 220, Laws of 1963 and RCW 38.38.428 are each amended to read as follows:

~~((1) Voting by members of a general or special court martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.~~

~~(2) The law officer of a general court martial and the president of a special court martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court martial or by the president of a special court martial upon any interlocutory question other than a motion for a finding of not~~

guilty, or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the law officer or president may change the ruling at any time during the trial except a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in RCW 38.38.432 beginning with the junior in rank.

(3) Before a vote is taken on the findings, the law officer of a general court martial and the president of a special court martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(a) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(d) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state:))

(1) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change a ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in RCW 38.38.432, beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(a) That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree to which there is no reasonable doubt; and

(d) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2), and (3) of this section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Sec. 49. Section 54, chapter 220, Laws of 1963 and RCW 38.38.432 are each amended to read as follows:

(1) No person may be convicted of an offense, except as provided in RCW 38.38.404(2) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty, or to reconsider a sentence with a view towards decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Sec. 50. Section 56, chapter 220, Laws of 1963 and RCW 38.38.440 are each amended to read as follows:

~~((1) Each court martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable, the record shall be authenticated by two members. A record of the proceedings of a trial in which the sentence adjudged includes a bad conduct discharge~~

~~or is more than that which could be adjudged by a special court martial shall contain a verbatim account of the proceedings and testimony before the court. All other records of trial shall contain such matter and be authenticated in such manner as the governor may by regulation prescribe.~~

~~(2) A copy of the record of the proceedings of each general and special court martial shall be given to the accused as soon as it is authenticated. If a verbatim record of trial by general court martial is not required by subsection (1) hereof, but has been made, the accused may buy such a record under such regulations as the governor may prescribe.)~~

(1) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(2) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the governor may prescribe.

(3) (a) A complete record of the proceedings and testimony shall be prepared:

(i) In each general court-martial case in which the sentence adjudged includes a dismissal, a discharge, or, if the sentence adjudged does not include a discharge, any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(ii) In each special court-martial case in which the sentence adjudged includes a dishonorable discharge.

(b) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the governor.

(4) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

Sec. 51. Section 58, chapter 220, Laws of 1963 and RCW 38.38.484 are each amended to read as follows:

(1) The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code.

(2) Unless otherwise provided in regulations to be prescribed by the governor, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable discharge reduces that member to pay grade E-1, effective on the date of that approval.

(3) If the sentence of a member who is reduced in pay grade under subsection (2) of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (2) of this section, the rights and privileges of which the member was deprived because of that reduction shall be restored and the member is entitled to the pay and allowances to which the member would have been entitled for the period the reduction was in effect, had he or she not been so reduced.

Sec. 52. Section 59, chapter 220, Laws of 1963 and RCW 38.38.488 are each amended to read as follows:

~~((1) Whenever a sentence of a court martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowance accrued before that date.~~

~~(2) Any period of confinement included in a sentence of a court martial begins to run from the date the sentence is adjudged by the court martial but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement. Regulations prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.~~

~~(3) All other sentences of courts martial are effective on the date ordered executed:))~~

(1) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under RCW 38.38.536.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is ordered to be executed by the convening authority, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Regulations prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.

(3) All other sentences of courts-martial are effective on the date ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer service of the sentence to confinement. The deferment shall terminate when the sentence is

ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

Sec. 53. Section 60, chapter 220, Laws of 1963 and RCW 38.38.492 are each amended to read as follows:

(1) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the ~~((state military forces))~~ organized militia or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such person as ~~((he))~~ the governor may authorize to act under RCW 38.38.080, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

Sec. 54. Section 61, chapter 220, Laws of 1963 and RCW 38.38.532 are each amended to read as follows:

Except as provided in RCW 38.38.196 and 38.38.556, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him or her. ~~((He))~~ The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit, and may suspend the execution of the sentence as approved by him or her.

Sec. 55. Section 63, chapter 220, Laws of 1963 and RCW 38.38.540 are each amended to read as follows:

The convening authority shall refer the record of each general court-martial to the staff judge advocate, who shall submit ~~((his))~~ a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

Sec. 56. Section 67, chapter 220, Laws of 1963 and RCW 38.38.556 are each amended to read as follows:

(1) If the convening authority is the governor, ~~((his))~~ the governor's action on the review of any record of trial is final.

(2) In all other cases not covered by subsection (1), if the sentence of a special court-martial as approved by the convening authority includes a ~~((bad conduct))~~ dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate ~~((or legal officer))~~ of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate ~~((or legal officer))~~ shall then be sent to the state judge advocate for review.

(3) All other special and summary court-martial records shall be sent to the ~~((law specialist or legal officer))~~ judge advocate of the appropriate force of the ~~((state military forces))~~ organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations ~~((prescribed by))~~ of the governor.

(4) The state judge advocate shall review the record of trial in each case sent ~~((to him))~~ for review as provided under subsection ~~((+))~~ (2) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(5) The state judge advocate shall take final action in any case reviewable by ~~((him))~~ the state judge advocate.

(6) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. ~~((He))~~ The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as ~~((he))~~ the state judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, ~~((he))~~ the state judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, ~~((he))~~ the state judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If ~~((he))~~ the state judge advocate sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(7) In a case reviewable by the state judge advocate under this section, ~~((he))~~ the state judge advocate shall instruct the convening authority to act in accordance with ~~((his))~~ the state judge advocate's decision on the review. If ~~((he))~~ the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, ~~((he))~~ the state judge advocate may dismiss the charges.



(8) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the ~~((state military forces))~~ organized militia, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a ~~((bad conduct))~~ dishonorable discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section.

Sec. 57. Section 69, chapter 220, Laws of 1963 and RCW 38.38.564 are each amended to read as follows:

(1) Upon the final review of a sentence of a general court-martial ~~((or of a sentence to a bad conduct discharge))~~, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate ~~((or legal officer))~~, as the case may be, and before the state judge advocate.

(2) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the ~~((state military forces))~~ organized militia and who has the qualifications prescribed in RCW 38.38.260, if available, to represent the accused before the reviewing authority, before the staff judge advocate ~~((or legal officer, as the case may be))~~, and before the state judge advocate, in the review of cases specified in subsection (1) of this section.

(3) If provided by ~~((him))~~ the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate ~~((or legal officer, as the case may be))~~, and before the state judge advocate.

Sec. 58. Section 70, chapter 220, Laws of 1963 and RCW 38.38.568 are each amended to read as follows:

(1) Before the vacation of the suspension of a special court-martial sentence ~~((which as approved includes a bad conduct discharge))~~, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if ~~((he))~~ the probationer so desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the ~~((state military forces))~~ organized militia of which the probationer is a member in all other cases covered by subsection (1) of this section. If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Sec. 59. Section 71, chapter 220, Laws of 1963 and RCW 38.38.572 are each amended to read as follows:

At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal(;) or dishonorable ((~~or bad conduct~~)) discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

Sec. 60. Section 73, chapter 220, Laws of 1963 and RCW 38.38.580 are each amended to read as follows:

(1) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable ((~~or bad conduct~~)) discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes.

Sec. 61. Section 82, chapter 220, Laws of 1963 and RCW 38.38.652 are each amended to read as follows:

Any person who:

(1) Procures his or her own enlistment or appointment in the ((~~state military forces~~)) organized militia by knowingly false representation or deliberate concealment as to ((~~his~~)) qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his or her own separation from the ((~~state military forces~~)) organized militia by knowingly false representation or deliberate concealment as to ((~~his~~)) eligibility for that separation; shall be punished as a court-martial may direct.

Sec. 62. Section 83, chapter 220, Laws of 1963 and RCW 38.38.656 are each amended to read as follows:

Any person subject to this code who effects an enlistment or appointment in or a separation from the (~~(state military forces)~~) organized militia of any person who is known to (~~(him)~~) the person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

Sec. 63. Section 84, chapter 220, Laws of 1963 and RCW 38.38.660 are each amended to read as follows:

(1) Any member of the (~~(state military forces)~~) organized militia who:

(a) Without authority goes or remains absent from (~~(his)~~) the member's unit, organization, or place of duty with intent to remain away therefrom permanently;

(b) Quits (~~(his)~~) the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the (~~(state military forces)~~) organized militia enlists or accepts an appointment in the same or another one of the (~~(state military forces)~~) organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated; is guilty of desertion.

(2) Any commissioned officer of the (~~(state military forces)~~) organized militia who, after tender of (~~(his)~~) a resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

Sec. 64. Section 90, chapter 220, Laws of 1963 and RCW 38.38.684 are each amended to read as follows:

Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer(~~(:)~~) or noncommissioned officer (~~(or petty officer,)~~) while that officer is in the execution of (~~(his)~~) the officer's office;

(2) Wilfully disobeys the lawful order of a warrant officer(~~(:)~~) or noncommissioned officer(~~(, or petty officer)~~); or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer(~~(:)~~) or noncommissioned officer(~~(, or petty officer,)~~) while that officer is in the execution of (~~(his)~~) the officer's office; shall be punished as a court-martial may direct.

Sec. 65. Section 91, chapter 220, Laws of 1963 and RCW 38.38.688 are each amended to read as follows:

Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the ~~((state military forces))~~ organized militia which it is ~~((his))~~ the person's duty to obey, fails to obey the order; or

(3) Is derelict in the performance of ~~((his))~~ the person's duties; shall be punished as a court-martial may direct.

Sec. 66. Section 98, chapter 220, Laws of 1963 and RCW 38.38.716 are each amended to read as follows:

Any person subject to this code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is ~~((his))~~ the person's duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away ~~((his))~~ arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits ~~((his))~~ a place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the ~~((state military forces))~~ organized militia;

(8) Wilfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is ~~((his))~~ the person's duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

Sec. 67. Section 99, chapter 220, Laws of 1963 and RCW 38.38.720 are each amended to read as follows:

Any person subject to this code who compels or attempts to compel the commander of any of the ~~((state military forces))~~ organized militia of the state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Sec. 68. Section 108, chapter 220, Laws of 1963 and RCW 38.38.756 are each amended to read as follows:

(1) Any person subject to this code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the ~~((state military forces))~~ organized militia shall be punished as a court-martial may direct.

(2) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the ~~((state military forces))~~ organized militia shall be punished as a court-martial may direct.

Sec. 69. Section 112, chapter 220, Laws of 1963 and RCW 38.38.772 are each amended to read as follows:

Any person subject to this code who for the purpose of avoiding work, duty or service in the ~~((state military forces))~~ organized militia:

(1) Feigns illness, physical disablement, mental lapse or derangement;  
or

(2) Intentionally inflicts self-injury;  
shall be punished as a court-martial may direct.

Sec. 70. Section 116, chapter 220, Laws of 1963 and RCW 38.38.788 are each amended to read as follows:

Any person subject to this code:

(1) Who, knowing it to be false or fraudulent:

(a) Makes any claim against the United States, the state, or any officer thereof; or

(b) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

(a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the ~~((state military forces))~~ organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which ~~((he))~~ the person receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the ~~((state military forces))~~ organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct.

Sec. 71. Section 119, chapter 220, Laws of 1963 and RCW 38.38.800 are each amended to read as follows:

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the ~~((state military forces))~~ organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

Sec. 72. Section 120, chapter 220, Laws of 1963 and RCW 38.38.840 are each amended to read as follows:

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

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

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

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

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

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

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

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

Sec. 73. Section 121, chapter 220, Laws of 1963 and RCW 38.38.844 are each amended to read as follows:

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

(a) The state judge advocate and all assistant state judge advocates~~((:));~~

(b) All law specialists~~((:));~~

(c) All summary courts~~\_~~martial~~((:));~~

(d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants~~((:));~~

(e) ~~((All commanding officers of the naval militia;~~

~~((f) All legal officers;~~

~~((g))~~ The military judge, president, ~~((law officer,))~~ trial counsel, and assistant trial counsel for all general and special courts~~\_~~martial~~((:));~~

~~((f))~~ ~~((f))~~ (f) The president and the counsel for the court of any court of inquiry~~((:));~~

~~((f))~~ ~~((g))~~ (g) All officers designated to take a deposition~~((:));~~

~~((f))~~ ~~((h))~~ (h) All persons detailed to conduct an investigation; and

~~((f))~~ ~~((i))~~ (i) All other persons designated by regulations of the governor.

(2) Officers of the ~~((state military forces))~~ organized militia may not be authorized to administer oaths as provided in this section unless they are on active state service or inactive duty for training in or with those forces under orders of the governor as prescribed in this code.

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

Sec. 74. Section 122, chapter 220, Laws of 1963 and RCW 38.38.848 are each amended to read as follows:

RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132, 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained to every enlisted member at the time of ~~((his))~~ the member's enlistment or transfer or induction into, or at the time of ~~((his))~~ the member's order to duty in or with any of the ~~((state military forces))~~ organized militia or within thirty days thereafter. They shall also be explained annually to each unit of the ~~((state military forces))~~ organized militia. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the ~~((state military forces))~~ organized militia, upon ~~((his))~~ request, for ~~((his))~~ personal examination.

Sec. 75. Section 123, chapter 220, Laws of 1963 and RCW 38.38.852 are each amended to read as follows:

~~((Any))~~ Members of the ~~((state military forces))~~ organized militia who believe~~((s-himself))~~ themselves wronged by ~~((his))~~ their commanding officer, and who, upon due application to that commanding officer, ~~((is))~~ are refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general. The governor or adjutant general shall examine the complaint and take proper measures for redressing the wrong complained of.

Sec. 76. Section 124, chapter 220, Laws of 1963 and RCW 38.38.856 are each amended to read as follows:

(1) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that ~~((his))~~ the person's property has been wrongfully taken by members of the ~~((state military forces, he))~~ organized militia, the commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by ~~((him))~~ the commanding officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (3) ~~((hereof))~~ of this section, on any disbursing officer for the payment by ~~((him))~~ the disbursing officer to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the ~~((state military forces))~~ organized militia to which the offenders belonged.

(3) Any person subject to this code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in ~~((his))~~ the person's behalf, and to cross-examine those appearing against him or her. ~~((He))~~ The person has the right of appeal to the next higher commander.

Sec. 77. Section 125, chapter 220, Laws of 1963 and RCW 38.38.860 are each amended to read as follows:

In the ~~((state military forces))~~ organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

Sec. 78. Section 126, chapter 220, Laws of 1963 and RCW 38.38.864 are each amended to read as follows:



(1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue ~~((subpoenas))~~ subpoenae and ~~((subpoenas))~~ subpoenae duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(2) Process and mandates may be issued by summary courts-martial, ~~((provost courts,))~~ or the ~~((president))~~ military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

(3) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

Sec. 79. Section 127, chapter 220, Laws of 1963 and RCW 38.38.868 are each amended to read as follows:

Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due ~~((him))~~ the person, until the fine is liquidated. Any sum so deducted shall be turned in to the military court which imposed the fine. Notwithstanding any other law, the officer collecting a fine or penalty imposed by a military court upon an officer or enlisted ~~((man))~~ person shall pay it within thirty days to the state treasurer. Such a fine becomes a part of, is credited to, and may be spent from, the military fund of the organization or detachment to which the officer or enlisted ~~((man))~~ person who paid the fine belonged. The treasurer of the state shall then report the amount thereof designating the organization or detachment to which it belongs, to the adjutant general of the state, and shall pay it over to the organization or detachment on request of its commanding officer.

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