

**Chapter 38.38 RCW**  
**WASHINGTON CODE OF MILITARY JUSTICE**

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**Reviser's note:** Article numbers in this chapter parallel equivalent sections in the federal Uniform Code of Military Justice and do not constitute part of the law.

## PART I—GENERAL PROVISIONS

**RCW 38.38.004 [Art. 1] Definitions—Construction.** In this chapter, unless the context otherwise requires:

(1) "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.

(2) "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.

(3) "Code" means this chapter.

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

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

(6) "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.

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

(8) "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.

(9) "Judge advocate" means an officer of the army or air national guard designated as a judge advocate by the judge advocate general of the army or the judge advocate general of the air force.

(10) "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.

(11) "Military" refers to any or all of the armed forces.

(12) "Military court" means a court-martial or a court of inquiry.

(13) "Military judge" means the presiding officer of a general or special court-martial detailed in accordance with RCW 38.38.256.

(14) "Military offense" means those offenses listed in RCW 38.38.644 through 38.38.800, 38.38.762, and 38.38.782.

(15) "Nonmilitary offense" means any offense other than those listed in Title 38 RCW.

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

(17) "Organized militia" means the national guard of the state, as defined in section 101(3) of Title 32, United States Code, and any

other military force organized under the laws of the state of Washington.

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

(19) "Shall" is used in an imperative sense.

(20) "State judge advocate" means the commissioned judge advocate officer responsible for supervising the administration of the military justice in the organized militia.

(21) "Superior commissioned officer" means a commissioned officer superior in rank or command. [2009 c 378 s 3; 1989 c 48 s 1; 1963 c 220 s 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—1963 c 220:** "This act shall take effect on July 1, 1963." [1963 c 220 s 140.] For codification of 1963 c 220, see Codification Tables.

**RCW 38.38.008 [Art. 2] Persons subject to this code.** This code applies to all members of the organized militia who are not in federal service pursuant to Title 10 U.S.C. [2009 c 378 s 4; 1989 c 48 s 2; 1963 c 220 s 2.]

**RCW 38.38.012 [Art. 3] Jurisdiction to try certain personnel.** No person who has deserted from the organized militia may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service. [1989 c 48 s 3; 1989 c 11 s 9; 1963 c 220 s 3.]

**Reviser's note:** This section was amended by 1989 c 11 s 9 and by 1989 c 48 s 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**RCW 38.38.016 [Art. 4] Dismissal of commissioned officer.** (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 the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which 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 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, the officer has no right to trial under this section. [1989 c 48 s 4; 1963 c 220 s 4.]

**RCW 38.38.020 [Art. 5] Territorial applicability of the code.**

(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 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. [1989 c 48 s 5; 1963 c 220 s 5.]

**RCW 38.38.024 [Art. 6] Judge advocates and legal officers. (1)**

The governor, on the recommendation of the adjutant general, shall appoint a judge advocate officer of the army or air national guard 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 organized militia and members of the bar of the highest court of the state.

(3) The state judge advocate or 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 in matters relating to the administration of military justice; and the staff judge advocate of any command is entitled to communicate directly with the staff judge advocate 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 to any reviewing authority upon the same case.

(6) No judge advocate may be assigned nonlegal duties unless authorized by the state judge advocate. [2009 c 378 s 5; 1989 c 48 s 6; 1963 c 220 s 6.]

## PART II—APPREHENSION AND RESTRAINT

**RCW 38.38.064 [Art. 7] Apprehension.** (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, and noncommissioned 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. [1989 c 48 s 7; 1963 c 220 s 7.]

**RCW 38.38.068 [Art. 8] Apprehension of deserters.** 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 organized militia and deliver the offender into the custody of the state of Washington organized militia. If an offender is apprehended outside of the state of Washington, the return to the area must be in accordance with normal extradition procedures or reciprocal agreement. [1989 c 48 s 8; 1963 c 220 s 8.]

**RCW 38.38.072 [Art. 9] Imposition of restraint.** (1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing 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 or noncommissioned officers to order enlisted members of the officer's command or subject to 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 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. [1989 c 48 s 9; 1963 c 220 s 9.]

**RCW 38.38.076 [Art. 10] Restraint of persons charged with offenses.** 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 the person of the specific wrong of which he or she is accused and to try the person or to dismiss the charges and release the person. [1989 c 48 s 10; 1963 c 220 s 10.]

**RCW 38.38.080 [Art. 10a] Confinement in jails.** 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 the adjutant general. [2009 c 378 s 7; 1989 c 48 s 11; 1963 c 220 s 11.]

**RCW 38.38.084 [Art. 11] Reports and receiving of prisoners.** (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 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 the prisoner, and the name of the person who ordered or authorized the commitment. [1989 c 48 s 12; 1963 c 220 s 12.]

**RCW 38.38.088 [Art. 13] Punishment prohibited before trial.** 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 the person, nor shall the arrest or confinement imposed upon the person be any more rigorous than the circumstances require to insure his or her presence, but the person may be subjected to minor punishment during that period for infractions of discipline. [1989 c 48 s 13; 1963 c 220 s 13.]

**RCW 38.38.092 [Art. 14] Delivery of offenders to civil authorities.** (1) Under such regulations as may be prescribed by the adjutant general, a person subject to this code 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 the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence. [2009 c 378 s 8; 1989 c 48 s 14; 1963 c 220 s 14.]

### PART III—NONJUDICIAL PUNISHMENT

**RCW 38.38.132 [Art. 15] Commanding officer's nonjudicial punishment—Suspension—Appeal.** (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 a commanding 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 restriction shall not be longer than the number of hours of extra duty that may have been imposed. 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. [2009 c 378 s 9; 1991 c 43 s 5; 1989 c 48 s 15; 1963 c 220 s 15.]

#### PART IV—COURTS-MARTIAL JURISDICTION

##### **RCW 38.38.172 [Art. 16] Courts-martial of organized militia not in federal service—Composition—Jurisdiction—Powers and proceedings.**

(1) In the 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 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. [1989 c 48 s 16; 1963 c 220 s 16.]

**RCW 38.38.176 [Art. 17] Jurisdiction of courts-martial in general.** Each force of the 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. [1989 c 48 s 17; 1963 c 220 s 17.]

**RCW 38.38.180 [Art. 18] Jurisdiction of general courts-martial.** Subject to RCW 38.38.176, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than three hundred dollars;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments. [2009 c 378 s 10; 1963 c 220 s 18.]

**RCW 38.38.184 [Art. 19] Jurisdiction of special courts-martial—Dishonorable discharge.** 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. [1989 c 48 s 18; 1963 c 220 s 19.]

**RCW 38.38.188 [Art. 20] Jurisdiction of summary courts-martial.**

- (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 the person objects thereto, unless under RCW 38.38.132 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 not more than one-half month's pay for two months, to reduction in rank of

enlisted soldiers, and to reduction of a noncommissioned officer to the ranks. [2009 c 378 s 11; 1989 c 48 s 19; 1963 c 220 s 20.]

**RCW 38.38.192 [Art. 21] Sentences of dismissal or dishonorable discharge to be approved by the governor.** In the organized militia not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor. [1963 c 220 s 21.]

**RCW 38.38.196 [Art. 21a] Complete record of proceedings and testimony if dishonorable discharge or dismissal adjudged.** A dishonorable 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. [1989 c 48 s 20; 1963 c 220 s 22.]

**RCW 38.38.200 [Art. 21b] Confinement instead of fine.** In the 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. [1989 c 48 s 21; 1963 c 220 s 23.]

#### PART V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

**RCW 38.38.240 [Art. 22] Who may convene general courts-martial.** In the organized militia not in federal service pursuant to Title 10 U.S.C., general courts-martial may be convened by the president or by the governor, or by the adjutant general. [2009 c 378 s 12; 1989 c 48 s 22; 1963 c 220 s 24.]

**RCW 38.38.244 [Art. 23] Special courts-martial of organized militia not in federal service—Who may convene.** (1) In the organized militia not in federal service pursuant to Title 10 U.S.C., anyone authorized to convene a general court-martial, 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. [2009 c 378 s 13; 1989 c 48 s 23; 1963 c 220 s 25.]

**RCW 38.38.248 [Art. 24] Summary courts-martial of organized militia not in federal service—Who may convene.** (1) In the organized militia not in federal service pursuant to Title 10 U.S.C., anyone authorized to convene a special court-martial, 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 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. [2009 c 378 s 14; 1989 c 48 s 24; 1963 c 220 s 26.]

**RCW 38.38.252 [Art. 25] Who may serve on courts-martial. (1)**

Any commissioned officer of or on duty with the 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 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 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 shall serve as a member of a court only if, before the 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 organized militia not larger than a company, a squadron, 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 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 the member is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(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. [1989 c 48 s 25; 1963 c 220 s 27.]

**RCW 38.38.256 [Art. 26] Military judge of a general or special court-martial.** (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. [1989 c 48 s 26; 1963 c 220 s 28.]

**RCW 38.38.258 [Art. 26a] Military judges—Qualifications.** A military judge must be a judge advocate. The adjutant general shall prescribe procedures for certifying, appointing, detailing, and removing military judges. [2009 c 378 s 6.]

**RCW 38.38.260 [Art. 27] Detail of trial counsel and defense counsel.** (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 subsection (2) of this section 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. [1991 c 43 s 6; 1989 c 48 s 27; 1963 c 220 s 29.]

**RCW 38.38.264 [Art. 28] Detail or employment of reporters and interpreters.** Under such regulations as the governor may prescribe, the convening authority of a general or special court martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court. [1963 c 220 s 30.]

**RCW 38.38.268 [Art. 29] Absent and additional members.** (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. [1989 c 48 s 28; 1963 c 220 s 31.]

## PART VI—PRETRIAL PROCEDURE

**RCW 38.38.308 [Art. 30] Charges and specifications.** (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. [1989 c 48 s 29; 1963 c 220 s 32.]

**RCW 38.38.312 [Art. 31] Compulsory self-incrimination prohibited.** (1) No person subject to this code may compel a person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate himself or herself.

(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 the person of the nature of the accusation and advising that 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 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 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 the person in a trial by court-martial. [2009 c 378 s 15; 1989 c 48 s 30; 1963 c 220 s 33.]

**RCW 38.38.316 [Art. 32] Investigation.** (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 the right to be represented at that investigation by counsel. 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 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) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after 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) If evidence adduced in an investigation under this chapter indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused:

(a) Is present at the investigation;

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

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

(5) 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. [2009 c 378 s 16; 1989 c 48 s 31; 1963 c 220 s 34.]

**RCW 38.38.320 [Art. 33] Forwarding of charges.** 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, the officer shall report in writing to the governor the reasons for delay. [1989 c 48 s 32; 1963 c 220 s 35.]

**RCW 38.38.324 [Art. 34] Advice of state judge advocate and reference for trial.** (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, 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.

(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. [1989 c 48 s 33; 1963 c 220 s 36.]

**RCW 38.38.328 [Art. 35] Service of charges.** 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 or be required to participate by himself or herself 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. [2011 c 336 s 769; 1989 c 48 s 34; 1963 c 220 s 37.]

## PART VII—TRIAL PROCEDURE

**RCW 38.38.368 [Art. 36] Governor may prescribe rules.** 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 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. [1989 c 48 s 35; 1963 c 220 s 38.]

**RCW 38.38.372 [Art. 37] Unlawfully influencing action of court.**  
(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, 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 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. [1989 c 48 s 36; 1963 c 220 s 39.]

**RCW 38.38.376 [Art. 38] Duties of trial counsel and defense counsel.** (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 or at an investigation under RCW 38.38.316 as provided in this subsection.

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

(b) The accused may be represented by:

(i) Military counsel detailed under RCW 38.38.260; or

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

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

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

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

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

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

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

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

(a) May forward for attachment to the record of proceedings a brief of such matters as he or she determines 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;

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

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

(5) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when 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.

(6) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when 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. [2009 c 378 s 17; 1989 c 48 s 37; 1963 c 220 s 40.]

**RCW 38.38.380 [Art. 39] Sessions.** (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. [1989 c 48 s 38; 1963 c 220 s 41.]

**RCW 38.38.384 [Art. 40] Continuances.** 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. [1989 c 48 s 39; 1963 c 220 s 42.]

**RCW 38.38.388 [Art. 41] Challenges.** (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) If exercise of a challenge for cause reduces the court below the minimum number of members required by RCW 38.38.172, all parties shall, notwithstanding RCW 38.38.268, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

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

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

(5) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge. [2009 c 378 s 18; 1989 c 48 s 40; 1963 c 220 s 43.]

**RCW 38.38.392 [Art. 42] Oaths.** (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. [1989 c 48 s 41; 1963 c 220 s 44.]

**RCW 38.38.396 [Art. 43] Statute of limitations.** (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 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.

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

(a) Has expired; or

(b) Will expire within one hundred eighty days after the date of dismissal of the charges and specifications[,]  
[then] trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in subsection (6) of this section are met.

(6) The conditions referred to in subsection (5) of this section are that the new charges and specifications must:

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

(b) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications. [2009 c 378 s 19; 1989 c 48 s 42; 1963 c 220 s 45.]

**RCW 38.38.400 [Art. 44] Former jeopardy.** (1) No person may, without 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. [1989 c 48 s 43; 1963 c 220 s 46.]

**RCW 38.38.404 [Art. 45] Pleas of the accused.** (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 the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if 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 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 though the accused had pleaded not guilty. [1991 c 43 s 7; 1989 c 48 s 44; 1963 c 220 s 47.]

**RCW 38.38.408 [Art. 46] Opportunity to obtain witnesses and other evidence.** (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, military magistrate, 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. [2009 c 378 s 20; 1989 c 48 s 45; 1963 c 220 s 48.]

**RCW 38.38.412 [Art. 47] Refusal to appear or testify—Penalty.**

(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, commission, or board;

(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) Willfully 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.

(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. [2009 c 378 s 21; 1989 c 48 s 46; 1963 c 220 s 49.]

**RCW 38.38.416 [Art. 48] Contempts.** A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for thirty days or a fine of one hundred dollars, or both. [1963 c 220 s 50.]

**RCW 38.38.420 [Art. 49] Depositions.** (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. [1989 c 48 s 47; 1963 c 220 s 51.]

**RCW 38.38.424 [Art. 50] Admissibility of records of courts of inquiry.** (1) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(2) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Such testimony may also be read in evidence before a court of inquiry or a military board. [1963 c 220 s 52.]

**RCW 38.38.428 [Art. 51] Voting, rulings, instructions.** (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. [1989 c 48 s 48; 1963 c 220 s 53.]

**RCW 38.38.432 [Art. 52] Number of votes required.** (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. [1989 c 48 s 49; 1963 c 220 s 54.]

**RCW 38.38.436 [Art. 53] Court to announce action.** A court martial shall announce its findings and sentence to the parties as soon as determined. [1963 c 220 s 55.]

**RCW 38.38.440 [Art. 54] Record of trial.** (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. [1989 c 48 s 50; 1963 c 220 s 56.]

## PART VIII—SENTENCES

**RCW 38.38.480 [Art. 55] Cruel and unusual punishments prohibited.** Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited. [1963 c 220 s 57.]

**RCW 38.38.484 [Art. 56] Maximum limits—Reduction in pay grade.**

(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. [1989 c 48 s 51; 1963 c 220 s 58.]

**RCW 38.38.488 [Art. 57] Effective date of sentences.** (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. [1989 c 48 s 52; 1963 c 220 s 59.]

**RCW 38.38.492 [Art. 58] Execution of confinement.** (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 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 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. [1989 c 48 s 53; 1963 c 220 s 60.]

#### PART IX—REVIEW OF COURTS-MARTIAL

**RCW 38.38.532 [Art. 59] Execution of sentence—Suspension of sentence.** 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. 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. [1989 c 48 s 54; 1963 c 220 s 61.]

**RCW 38.38.536 [Art. 60] Initial action on the record.** After a trial by court martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the governor. [1963 c 220 s 62.]

**RCW 38.38.540 [Art. 61] Initial action on the record—General court-martial records.** The convening authority shall refer the record of each general court-martial to the staff judge advocate, who shall submit 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. [1989 c 48 s 55; 1963 c 220 s 63.]

**RCW 38.38.544 [Art. 62] Reconsideration and revision.** (1) If a specification before a court martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(a) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(b) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

(c) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. [1963 c 220 s 64.]

**RCW 38.38.548 [Art. 63] Rehearings.** (1) If the convening authority disapproves the findings and sentence of a court martial he or she may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he or she shall state the reasons for disapproval. If he or she disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges.

(2) Each rehearing shall take place before a court martial composed of members not members of the court martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he or she was found not guilty by the first court martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [2011 c 336 s 770; 1963 c 220 s 65.]

**RCW 38.38.552 [Art. 64] Approval by the convening authority.** In acting on the findings and sentence of a court martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he or she finds correct in law and fact and as he or she in his or her discretion determines should be approved. Unless he or she indicates otherwise, approval of the sentence is approval of the findings and sentence. [2011 c 336 s 771; 1963 c 220 s 66.]

**RCW 38.38.556 [Art. 65] Review of records—Disposition.** (1) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

(2) In all other cases not covered by subsection (1) of this section, if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate 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 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 judge advocate of the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations of the governor.

(4) The state judge advocate shall review the record of trial in each case sent 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 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. The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as 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, 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, 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 the state judge advocate sets aside the findings and sentence and does not order a rehearing, he or she shall order that the charges be dismissed.

(7) In a case reviewable by the state judge advocate under this section, the state judge advocate shall instruct the convening authority to act in accordance with the state judge advocate's decision on the review. If the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, 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 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 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. [2011 c 336 s 772; 1989 c 48 s 56; 1963 c 220 s 67.]

**RCW 38.38.560 [Art. 66] Error of law—Lesser included offense.**

(1) A finding or sentence of a court martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense. [1963 c 220 s 68.]

**RCW 38.38.564 [Art. 67] Review counsel.** (1) Upon the final review of a sentence of a general court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, 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 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, and before the state judge advocate, in the review of cases specified in subsection (1) of this section.

(3) If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate. [1991 c 43 s 8; 1989 c 48 s 57; 1963 c 220 s 69.]

**RCW 38.38.568 [Art. 68] Vacation of suspension.** (1) Before the vacation of the suspension of a special court-martial sentence, 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 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 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. [1989 c 48 s 58; 1963 c 220 s 70.]

**RCW 38.38.572 [Art. 69] Petition for a new trial.** At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal or dishonorable discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial. [1989 c 48 s 59; 1963 c 220 s 71.]

**RCW 38.38.576 [Art. 70] Remission and suspension.** (1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(2) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed



in accordance with the sentence of a court martial. [1963 c 220 s 72.]

**RCW 38.38.580 [Art. 71] Restoration.** (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 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 or her 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 or she 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. [2011 c 336 s 773; 1989 c 48 s 60; 1963 c 220 s 73.]

**RCW 38.38.584 [Art. 72] Finality of proceedings, findings and sentences.** The proceedings, findings and sentences of courts martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings of courts martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in RCW 38.38.572. [1963 c 220 s 74.]

#### PART X—PUNITIVE ARTICLES

**RCW 38.38.624 [Art. 76] Persons to be tried or punished.** No person may be tried or punished for any offense provided for in RCW 38.38.628 through 38.38.800, unless he or she was a member of the organized militia at the time of the offense. [2009 c 378 s 22; 1963 c 220 s 75.]

**RCW 38.38.628 [Art. 77] Principals.** Any person subject to this code who:

(1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him or her would be punishable by this code;

is a principal. [2011 c 336 s 774; 1963 c 220 s 76.]

**RCW 38.38.632 [Art. 78] Accessory after the fact.** Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court martial may direct. [2011 c 336 s 775; 1963 c 220 s 77.]

**RCW 38.38.636 [Art. 79] Conviction of lesser included offense.** An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [1963 c 220 s 78.]

**RCW 38.38.640 [Art. 80] Attempts.** (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(2) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. [1963 c 220 s 79.]

**RCW 38.38.644 [Art. 81] Conspiracy.** Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court martial may direct. [1963 c 220 s 80.]

**RCW 38.38.648 [Art. 82] Solicitation.** (1) Any person subject to this code who solicits or advises another or others to desert in violation of RCW 38.38.660 or mutiny in violation of RCW 38.38.696 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he or she shall be punished as a court martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of RCW 38.38.716 or sedition in violation of RCW 38.38.696 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he or she shall be punished as a court martial may direct. [2011 c 336 s 776; 1963 c 220 s 81.]

**RCW 38.38.652 [Art. 83] Fraudulent enlistment, appointment, or separation.** Any person who:

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

(2) Procures his or her own separation from the organized militia by knowingly false representation or deliberate concealment as to eligibility for that separation;

shall be punished as a court-martial may direct. [1989 c 48 s 61; 1963 c 220 s 82.]

**RCW 38.38.656 [Art. 84] Unlawful enlistment, appointment, or separation.** Any person subject to this code who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to 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. [1989 c 48 s 62; 1963 c 220 s 83.]

**RCW 38.38.660 [Art. 85] Desertion.** (1) Any member of the organized militia who:

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

(b) Quits 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 organized militia enlists or accepts an appointment in the same or another one of the 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 organized militia who, after tender of 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. [1989 c 48 s 63; 1963 c 220 s 84.]

**RCW 38.38.664 [Art. 86] Absence without leave.** Any person subject to this code who, without authority:

(1) Fails to go to his or her appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed;

shall be punished as a court martial may direct. [2011 c 336 s 777; 1963 c 220 s 85.]

**RCW 38.38.668 [Art. 87] Missing movement.** Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he or she is required in the course of

duty to move shall be punished as a court martial may direct. [2011 c 336 s 778; 1963 c 220 s 86.]

**RCW 38.38.672 [Art. 88] Contempt towards officials.** Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court martial may direct. [1963 c 220 s 87.]

**RCW 38.38.676 [Art. 89] Disrespect towards superior commissioned officer.** Any person subject to this code who behaves with disrespect towards his or her superior commissioned officer shall be punished as a court martial may direct. [2011 c 336 s 779; 1963 c 220 s 88.]

**RCW 38.38.680 [Art. 90] Assaulting or willfully disobeying superior commissioned officer.** Any person subject to this code who:

- (1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against him or her while he or she is in the execution of his or her office; or
- (2) Willfully disobeys a lawful command of his or her superior commissioned officer;

shall be punished as a court martial may direct. [2011 c 336 s 780; 1963 c 220 s 89.]

**RCW 38.38.684 [Art. 91] Insubordinate conduct toward warrant officer or noncommissioned officer.** Any warrant officer or enlisted member who:

- (1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of the officer's office;
- (2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or
- (3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of the officer's office;

shall be punished as a court-martial may direct. [1989 c 48 s 64; 1963 c 220 s 90.]

**RCW 38.38.688 [Art. 92] Failure to obey order or regulation.** 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 organized militia which it is the person's duty to obey, fails to obey the order; or
- (3) Is derelict in the performance of the person's duties;

shall be punished as a court-martial may direct. [1989 c 48 s 65; 1963 c 220 s 91.]

**RCW 38.38.692 [Art. 93] Cruelty and maltreatment.** Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court martial may direct. [2011 c 336 s 781; 1963 c 220 s 92.]

**RCW 38.38.696 [Art. 94] Mutiny or sedition.** (1) Any person subject to this code who:

(a) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny;

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(c) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court martial may direct. [2011 c 336 s 782; 1963 c 220 s 93.]

**RCW 38.38.700 [Art. 95] Resistance, breach of arrest, and escape.** Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court martial may direct. [1963 c 220 s 94.]

**RCW 38.38.704 [Art. 96] Releasing prisoner without proper authority.** Any person subject to this code who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court martial may direct, whether or not the prisoner was committed in strict compliance with law. [2011 c 336 s 783; 1963 c 220 s 95.]

**RCW 38.38.708 [Art. 97] Unlawful detention of another.** Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court martial may direct. [1963 c 220 s 96.]

**RCW 38.38.712 [Art. 98] Noncompliance with procedural rules.** Any person subject to this code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court martial may direct. [1963 c 220 s 97.]

**RCW 38.38.716 [Art. 99] Misbehavior before the enemy.** 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 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 arms or ammunition;
  - (5) Is guilty of cowardly conduct;
  - (6) Quits 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 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 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. [1989 c 48 s 66; 1963 c 220 s 98.]

**RCW 38.38.720 [Art. 100] Subordinate compelling surrender.** Any person subject to this code who compels or attempts to compel the commander of any of the 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. [1989 c 48 s 67; 1963 c 220 s 99.]

**RCW 38.38.724 [Art. 101] Improper use of countersign.** Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court martial may direct. [2011 c 336 s 784; 1963 c 220 s 100.]

**RCW 38.38.728 [Art. 102] Forcing a safeguard.** Any person subject to this code who forces a safeguard shall be punished as a court martial may direct. [1963 c 220 s 101.]

**RCW 38.38.732 [Art. 103] Captured or abandoned property.** (1) All persons subject to this code shall secure all public property

taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1) of this section;

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he or she receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself; or

(c) Engages in looting or pillaging;

shall be punished as a court martial may direct. [2011 c 336 s 785; 1963 c 220 s 102.]

**RCW 38.38.736 [Art. 104] Aiding the enemy.** Any person subject to this code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall be punished as a court martial may direct. [1963 c 220 s 103.]

**RCW 38.38.740 [Art. 105] Misconduct of a prisoner.** Any person subject to this code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his or her captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court martial may direct. [2011 c 336 s 786; 1963 c 220 s 104.]

**RCW 38.38.744 [Art. 107] False official statements.** Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court martial may direct. [1963 c 220 s 105.]

**RCW 38.38.748 [Art. 108] Military property—Loss, damage, destruction, or wrongful disposition.** Any person subject to this code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold or wrongfully disposed of; any military property of the United States or of the state shall be punished as a court martial may direct. [1963 c 220 s 106.]

**RCW 38.38.752 [Art. 109] Property other than military property—Waste, spoilage, or destruction.** Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct. [2009 c 378 s 23; 1963 c 220 s 107.]

**RCW 38.38.756 [Art. 110] Improper hazarding of vessel.** (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 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 organized militia shall be punished as a court-martial may direct. [1989 c 48 s 68; 1963 c 220 s 108.]

**RCW 38.38.760 [Art. 111] Reckless or impaired operation of a vehicle, aircraft, or vessel.** (1) Any person subject to this code who:

(a) Operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in RCW 38.38.762; or

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

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

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

(3) For purposes of this section, "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited. [2009 c 378 s 24; 1963 c 220 s 109.]

**RCW 38.38.762 [Art. 112a] Use, possession, or distribution of controlled substances.** (1) Any person subject to this code who wrongfully uses, possesses, distributes, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces or organized militia a substance described in subsection (2) of this section shall be punished as a court-martial may direct.

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

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



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

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

(3) For the purposes of this section, "cannabis" has the meaning provided in RCW 69.50.101. [2022 c 16 s 27; 2009 c 378 s 25.]

~~Intent—Finding—2022 c 16:~~ See note following RCW 69.50.101.

**RCW 38.38.764 [Art. 112] Drunk on duty—Sleeping on post—Leaving post before relief.** Any person subject to this code who is found drunk on duty or sleeping upon his or her post, or who leaves his or her post before he or she is regularly relieved, shall be punished as a court martial may direct. [2011 c 336 s 787; 1963 c 220 s 110.]

**RCW 38.38.768 [Art. 114] Dueling.** Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court martial may direct. [1963 c 220 s 111.]

**RCW 38.38.772 [Art. 115] Malingering.** Any person subject to this code who for the purpose of avoiding work, duty or service in the 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. [1989 c 48 s 69; 1963 c 220 s 112.]

**RCW 38.38.776 [Art. 116] Riot or breach of peace.** Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court martial may direct. [1963 c 220 s 113.]

**RCW 38.38.780 [Art. 117] Provoking speeches or gestures.** Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court martial may direct. [1963 c 220 s 114.]

**RCW 38.38.782 [Art. 128] Assault upon another member of the organized militia.** Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another member of the organized militia, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct. [2009 c 378 s 26.]

**RCW 38.38.783 [Art. 121] Larceny and wrongful appropriation.**

(1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

(a) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his [or her] own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(b) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his [or her] own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court martial may direct. [1963 c 220 s 117. Formerly RCW 38.38.792.]

**RCW 38.38.784 [Art. 131] Perjury.** Any person subject to this code who in a judicial proceeding or in a course of justice conducted under this code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court martial may direct. [1963 c 220 s 115.]

**RCW 38.38.788 [Art. 132] Frauds against the government.** 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 organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which 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 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. [1989 c 48 s 70; 1963 c 220 s 116.]

**RCW 38.38.796 [Art. 133] Conduct unbecoming an officer and a gentleman.** Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court martial may direct. [1963 c 220 s 118.]

**RCW 38.38.800 [Art. 134] General article.** Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the 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 in the first degree, burglary, or housebreaking, jurisdiction of which is reserved to civil courts. [2009 c 378 s 27; 1989 c 48 s 71; 1963 c 220 s 119.]

#### PART XI—MISCELLANEOUS PROVISIONS

**RCW 38.38.840 [Art. 135] Courts of inquiry.** (1) Courts of inquiry to investigate any matter may be convened by the governor, the adjutant general, 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 state military 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. [2009 c 378 s 28; 1989 c 48 s 72; 1963 c 220 s 120.]

**RCW 38.38.844 [Art. 136] Authority to administer oaths.** (1) The following members of the 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 or paralegals;

(c) All summary courts-martial;

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

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

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

(g) All officers designated to take a deposition;

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

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

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

(k) All other persons designated by regulations of the adjutant general.

(2) The signature without seal of any such person, together with the title of the person's office, is prima facie evidence of the person's authority. [2009 c 378 s 29; 1989 c 48 s 73; 1963 c 220 s 121.]

**RCW 38.38.848 [Art. 137] Sections to be explained.** (1) 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:

(a) At the time of the member's enlistment or transfer or induction;

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

(c) Within forty days thereafter.

(2) These sections shall also be explained again to each member of the organized militia each time a member of the organized militia reenlists or extends his or her enlistment.

(3) A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the organized militia, upon request, for personal examination. [2009 c 378 s 30; 1989 c 48 s 74; 1963 c 220 s 122.]

**\*Reviser's note:** RCW 38.38.792 was recodified as RCW 38.38.783 by the code reviser September 2009.

**RCW 38.38.852 [Art. 138] Complaints of wrongs.** Members of the organized militia who believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, 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. [1989 c 48 s 75; 1963 c 220 s 123.]

**RCW 38.38.856 [Art. 139] Redress of injuries to property.** (1) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the 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 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) of this section, on any disbursing officer for the payment by 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 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 the person's behalf, and to cross-examine those appearing against him or her. The person has the right of appeal to the next higher commander. [1989 c 48 s 76; 1963 c 220 s 124.]

**RCW 38.38.860 [Art. 140] Execution of process and sentence.** In the 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. [1989 c 48 s 77; 1963 c 220 s 125.]

**RCW 38.38.864 [Art. 141] Process of military courts.** (1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenae and 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, or the 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. [1989 c 48 s 78; 1963 c 220 s 126.]

**RCW 38.38.868 [Art. 142] Payment of fines and disposition thereof.** 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 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 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 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. [1989 c 48 s 79; 1963 c 220 s 127.]

**RCW 38.38.872 [Art. 143] Immunity for action of military courts.** No accused may bring an action or proceeding against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court. [1963 c 220 s 128.]

**RCW 38.38.876 [Art. 144] Presumption of jurisdiction.** The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding. [1963 c 220 s 129.]

**RCW 38.38.880 [Art. 145] Delegation of authority by the governor.** The governor may delegate any authority vested in him or her under this code, and may provide for the subdelegation of any such authority, except the power given him or her by RCW 38.38.192 and 38.38.240. [2011 c 336 s 788; 1963 c 220 s 130.]

**RCW 38.38.884 [Art. 146] Uniformity of interpretation.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as

practical, to make that law uniform with the law of the United States.  
[1963 c 220 s 131.]

**RCW 38.38.888 [Art. 147] Short title.** This chapter may be cited  
as the "Washington code of military justice." [1963 c 220 s 132.]