

SHB 1036 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED 04/07/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 38.32.010 and 1989 c 19 s 39 are each amended to read  
4 as follows:

5 Any member of the organized militia committing nonmilitary offenses  
6 under chapter 38.38 RCW while on duty status ((as provided in RCW  
7 38.38.624,)) or within state armories((, committing offenses against  
8 the laws of the state,)) shall be promptly arrested by the military  
9 authorities and turned over to the civil authorities of the county or  
10 city in which the offense was committed.

11 Sec. 2. RCW 38.32.020 and 1989 c 19 s 40 are each amended to read  
12 as follows:

13 (1) Military offenses under chapter 38.38 RCW committed ((while on  
14 inactive duty or active state service as defined in RCW 38.04.010)) by  
15 members of the organized militia may be tried and punished as provided  
16 under chapter 38.38 RCW ((after this duty or service has terminated,  
17 and if found guilty the accused shall be punished accordingly. Any  
18 member of the organized militia on "inactive duty" or "active state  
19 service," as defined in RCW 38.04.010, committing any offense under  
20 chapter 38.38 RCW, where the offense charged is also made an offense by  
21 the civil law of this state, may, in the discretion of the officer  
22 whose duty it is to approve the charge, be turned over to the proper  
23 civil authorities for trial)).

24 (2) Primary jurisdiction over military offenses enumerated in  
25 chapter 38.38 RCW is with military authorities. Primary jurisdiction  
26 over nonmilitary offenses is with civilian authorities. If an offense  
27 may be both military and nonmilitary, the military authorities may  
28 proceed only after the civilian authorities have declined to prosecute  
29 or dismissed the charge, provided jeopardy has not attached.

1 Jurisdiction over attempted crimes, conspiracy crimes, solicitation,  
2 and accessory crimes must be determined by whether the underlying  
3 offense is a military or nonmilitary offense.

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

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

12 In this chapter, unless the context otherwise requires:

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

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

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

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

21 (5) "Superior commissioned officer" means a commissioned officer  
22 superior in rank or command.

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

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

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

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

35 ~~The term "inactive duty" shall include periods of drill and such~~  
36 ~~other training and service not requiring the entire time of the~~

1 ~~organization or person, as may be required under state or federal laws,~~  
2 ~~regulations, or orders, including travel to and from such duty.~~

3 ~~(10))~~ "Military court" means a court-martial or a court of  
4 inquiry.

5 ~~((11))~~ (10) "Military judge" means the presiding officer of a  
6 general or special court-martial detailed in accordance with RCW  
7 38.38.256.

8 ~~((12))~~ (11) "State judge advocate" means the commissioned judge  
9 advocate officer responsible for supervising the administration of the  
10 military justice in the organized militia.

11 ~~((13))~~ (12) "Accuser" means a person who signs and swears to  
12 charges, any person who directs that charges nominally be signed and  
13 sworn to by another, and any person who has an interest other than an  
14 official interest in the prosecution of the accused.

15 ~~((14))~~ (13) "Military" refers to any or all of the armed forces.

16 ~~((15))~~ (14) "Convening authority" includes, in addition to the  
17 person who convened the court, a commissioned officer commanding for  
18 the time being, or a successor in command.

19 ~~((16))~~ (15) "May" is used in a permissive sense. The words "no  
20 person may. . ." mean that no person is required, authorized, or  
21 permitted to do the act prescribed.

22 ~~((17))~~ (16) "Shall" is used in an imperative sense.

23 ~~((18))~~ (17) "Code" means this chapter.

24 ~~((19))~~ (18) "A month's pay" or fraction thereof shall be  
25 calculated based upon a member's basic pay entitlement as if the member  
26 were serving for a thirty-day period.

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

30 (20) "Military offense" means those offenses listed in RCW  
31 38.38.644 through 38.38.800 and sections 25 and 26 of this act.

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

34 **Sec. 4.** RCW 38.38.008 and 1989 c 48 s 2 are each amended to read  
35 as follows:

36 This code applies to all members of the organized militia who are  
37 not in federal service pursuant to Title 10 U.S.C.



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

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

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

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

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

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

1 exercising general court-martial jurisdiction or an officer of general  
2 rank in command may delegate powers under this section to a principal  
3 assistant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) The officer who imposes the punishment authorized in subsection  
28 (2) of this section, or a successor in command, may, at any time,  
29 suspend probationally any part or amount of the unexecuted punishment  
30 imposed and may suspend probationally a reduction in grade or a  
31 forfeiture imposed under subsection (2) of this section, whether or not  
32 executed. In addition, the officer may, at any time, remit or mitigate  
33 any part or amount of the unexecuted punishment imposed and may set  
34 aside in whole or in part the punishment, whether executed or  
35 unexecuted, and restore all rights, privileges, and property affected.  
36 The officer may also mitigate reduction in grade to forfeiture or  
37 detention of pay. When mitigating extra duties to restriction, the  
38 restriction shall not be longer than the number of hours of extra duty

1 that may have been imposed. When mitigating reduction in grade to  
2 forfeiture or detention of pay, the amount of the forfeiture or  
3 detention shall not be greater than the amount that could have been  
4 imposed initially under this section by the officer who imposed the  
5 punishment mitigated.

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

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

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

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

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

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

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

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

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

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



1 Subject to RCW 38.38.176, general courts-martial have jurisdiction  
2 to try persons subject to this code for any offense made punishable by  
3 this code and may, under such limitations as the governor may  
4 prescribe, adjudge any of the following punishments:

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

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

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

16 (2) No person with respect to whom summary courts-martial have  
17 jurisdiction may be brought to trial before a summary court-martial if  
18 the person objects thereto, unless under RCW 38.38.132 the person has  
19 been permitted and has elected to refuse punishment under that section.  
20 If objection to trial by summary court-martial is made by an accused  
21 who has been permitted to refuse punishment under RCW 38.38.132, trial  
22 shall be ordered by special or general court-martial, as may be  
23 appropriate.

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

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

31 In the organized militia not in federal service pursuant to Title  
32 10 U.S.C., general courts-martial may be convened by the president or  
33 by the governor, or by the (~~commanding general of the national guard~~  
34 ~~of the District of Columbia~~) adjutant general.

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

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

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

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

15           (1) In the organized militia not in federal service pursuant to  
16 Title 10 U.S.C., anyone authorized to convene a special court-martial,  
17 the commanding officer of a garrison, fort, post, camp, air base,  
18 auxiliary air base, or other place where troops are on duty, or of a  
19 regiment, wing, group, detached battalion, detached squadron, detached  
20 company, or other detachment((~~τ~~)) may convene a summary court-martial  
21 consisting of one commissioned officer. The proceedings shall be  
22 informal.

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

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

31           (1) No person subject to this code may compel a person((~~s~~)) to  
32 incriminate ((~~themselves~~)) himself or herself or to answer any question  
33 the answer to which may tend to incriminate ((~~them~~)) himself or  
34 herself.

35           (2) No person subject to this code may interrogate, or request any  
36 statement from, an accused or a person suspected of an offense without

1 first informing the person of the nature of the accusation and advising  
2 that the person does not have to make any statement regarding the  
3 offense of which he or she is accused or suspected and that any  
4 statement made by the person may be used as evidence against him or her  
5 in a trial by court-martial.

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

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

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

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

23 (2) The accused shall be advised of the charges against him or her  
24 and of the right to be represented at that investigation by counsel.  
25 The accused has a right to be represented at that investigation as  
26 provided in RCW 38.38.376 and in regulations prescribed under that  
27 section.

28 At that investigation full opportunity shall be given to the  
29 accused to cross-examine witnesses against him or her if they are  
30 available and to present anything the person may desire in his or her  
31 own behalf, either in defense or mitigation, and the investigating  
32 officer shall examine available witnesses requested by the accused. If  
33 the charges are forwarded after the investigation, they shall be  
34 accompanied by a statement of the substance of the testimony taken on  
35 both sides and a copy thereof shall be given to the accused.

36 (3) If an investigation of the subject matter of an offense has  
37 been conducted before the accused is charged with the offense, and if

1 the accused was present at the investigation and afforded the  
2 opportunities for representation, cross-examination, and presentation  
3 prescribed in subsection (2) (~~hereof~~) of this section, no further  
4 investigation of that charge is necessary under this section unless it  
5 is demanded by the accused after being informed of the charge. A  
6 demand for further investigation entitles the accused to recall  
7 witnesses for further cross-examination and to offer any new evidence  
8 in his or her own behalf.

9 (4) If evidence adduced in an investigation under this chapter  
10 indicates that the accused committed an uncharged offense, the  
11 investigating officer may investigate the subject matter of that  
12 offense without the accused having first been charged with the offense  
13 if the accused:

14 (a) Is present at the investigation;

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

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

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

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

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

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

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

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

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

12 (b) The accused may be represented by:

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

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

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

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

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

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

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

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

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

3       (a) May forward for attachment to the record of proceedings a brief  
4 of such matters as he or she determines should be considered in behalf  
5 of the accused on review, including any objection to the contents of  
6 the record which he or she considers appropriate;

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

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

10       (5) An assistant trial counsel of a general court-martial may,  
11 under the direction of the trial counsel or when qualified to be a  
12 trial counsel as required by RCW 38.38.260, perform any duty imposed by  
13 law, regulation, or the custom of the service upon the trial counsel of  
14 the court. An assistant trial counsel of a special court-martial may  
15 perform any duty of the trial counsel.

16       ~~((+5+))~~ (6) An assistant defense counsel of a general or special  
17 court-martial may, under the direction of the defense counsel or when  
18 qualified to be the defense counsel as required by RCW 38.38.260,  
19 perform any duty imposed by law, regulation, or the custom of the  
20 service upon counsel for the accused.

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

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

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

36       (3) Each accused and the trial counsel is entitled to one

1 peremptory challenge, but the military judge may not be challenged  
2 except for cause.

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

9 (5) Whenever additional members are detailed to the court, and  
10 after any challenges for cause against such additional members are  
11 presented and decided, each accused and the trial counsel are entitled  
12 to one peremptory challenge against members not previously subject to  
13 peremptory challenge.

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

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

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

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

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

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

1       (a) Has expired; or

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

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

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

12       (b) Allege the same acts or omissions that were alleged in the  
13 dismissed charges or specifications or allege acts or omissions that  
14 were included in the dismissed charges or specifications.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17       (2) For purposes of subsection (1) of this section, the blood  
18 alcohol content limit with respect to alcohol concentration in a  
19 person's blood is 0.08 grams of alcohol per one hundred milliliters of  
20 blood and with respect to alcohol concentration in a person's breath is  
21 0.08 grams of alcohol per two hundred ten liters of breath, as shown by  
22 chemical analysis.

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

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

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

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

36       (a) Opium, heroin, cocaine, amphetamine, lysergic acid

1 diethylamide, methamphetamine, phencyclidine, barbituric acid, and  
2 marijuana and any compound or derivative of any such substance.

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

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

9 NEW SECTION. **Sec. 26.** A new section is added to chapter 38.38 RCW  
10 to read as follows:

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

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

18 Though not specifically mentioned in this code, all disorders and  
19 neglects to the prejudice of good order and discipline in the organized  
20 militia, of which persons subject to this code may be guilty, shall be  
21 taken cognizance of by a general, special or summary court-martial,  
22 according to the nature and degree of the offense, and shall be  
23 punished at the discretion of that court. However, cognizance may not  
24 be taken of, and jurisdiction may not be extended to, the crimes of  
25 murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion,  
26 assault in the first degree, burglary, or housebreaking, jurisdiction  
27 of which is reserved to civil courts.

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

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

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

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

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

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

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

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

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

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

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

35 (a) The state judge advocate and all assistant state judge  
36 advocates;

37 (b) All law specialists or paralegals;

1 (c) All summary courts-martial;  
2 (d) All adjutants, assistant adjutants, acting adjutants, and  
3 personnel adjutants;  
4 (e) The military judge, president, trial counsel, and assistant  
5 trial counsel for all general and special courts-martial;  
6 (f) The president and the counsel for the court of any court of  
7 inquiry;  
8 (g) All officers designated to take a deposition;  
9 (h) All commanding officers of units of the organized militia;  
10 (i) All officers of the organized militia designated as recruiting  
11 officers;  
12 (j) All persons detailed to conduct an investigation; and  
13 ~~((+i))~~ (k) All other persons designated by regulations of the  
14 ~~((governor))~~ adjutant general.  
15 (2) ~~((Officers of the organized militia may not be authorized to~~  
16 ~~administer oaths as provided in this section unless they are on active~~  
17 ~~state service or inactive duty for training in or with those forces~~  
18 ~~under orders of the governor as prescribed in this code.~~  
19 ~~(+3))~~ The signature without seal of any such person, together with  
20 the title of the person's office, is prima facie evidence of the  
21 person's authority.

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

24 (1) RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132,  
25 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through  
26 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained  
27 to every enlisted member:

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

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

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

33 (2) ~~These sections~~ shall also be explained ~~((annually to each unit~~  
34 ~~of the organized militia))~~ again to each member of the organized  
35 militia each time a member of the organized militia reenlists or  
36 extends his or her enlistment.

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

**SHB 1036** - S COMM AMD

By Committee on Government Operations & Elections

**ADOPTED 04/07/2009**

4       On page 1, line 1 of the title, after "justice;" strike the  
5 remainder of the title and insert "amending RCW 38.32.010, 38.32.020,  
6 38.38.004, 38.38.008, 38.38.024, 38.38.080, 38.38.092, 38.38.132,  
7 38.38.180, 38.38.188, 38.38.240, 38.38.244, 38.38.248, 38.38.312,  
8 38.38.316, 38.38.376, 38.38.388, 38.38.396, 38.38.408, 38.38.412,  
9 38.38.624, 38.38.752, 38.38.760, 38.38.800, 38.38.840, 38.38.844, and  
10 38.38.848; and adding new sections to chapter 38.38 RCW."

--- END ---