

SSB 5032 - S AMD 48

By Senators Hobbs, Swecker

ADOPTED 03/06/2009

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 **Sec. 5.** RCW 38.38.024 and 1989 c 48 s 6 are each amended to read
2 as follows:

3 (1) The governor, on the recommendation of the adjutant general,
4 shall appoint ((an)) a judge advocate officer of the ((organized
5 militia)) army or air national guard as state judge advocate. To be
6 eligible for appointment, an officer must be a member of the bar of the
7 highest court of the state and must have been a member of the bar of
8 the state for at least five years.

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

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

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

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

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

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 38.38 RCW
31 to read as follows:

32 A military judge must be a judge advocate. The adjutant general
33 shall prescribe procedures for certifying, appointing, detailing, and
34 removing military judges.

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

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."

SSB 5032 - S AMD

By Senators Hobbs, Swecker

ADOPTED 03/06/2009

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."

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