

HOUSE BILL NO. HB0022

Wyoming military code.

Sponsored by: Joint Transportation, Highways & Military
Affairs Interim Committee

A BILL

for

1 AN ACT relating to defense forces and affairs; amending and
2 updating the state military code; repealing provisions; and
3 providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 19-12-101(a), (b), by creating a new
8 subsection (c), by amending and renumbering (c) as (d), by
9 renumbering (d) as (e) and by creating new subsections (f)
10 and (g), 19-12-102, 19-12-103(a), 19-12-104(a)(intro), (i),
11 (b)(intro), (i), (ii), (c) and by creating a new subsection
12 (d), 19-12-105(a) through (d), by creating a new subsection
13 (e), by amending and renumbering (e) through (g) as (f)
14 through (h), by renumbering (h) as (j) and by amending and
15 renumbering (j) as (k), 19-12-106(a), by amending and

1 renumbering (b) as (a)(ii), by amending and renumbering (c)
2 and (d) as (b) and (c), by renumbering (e) as (d) and by
3 amending and renumbering (f) as (e), 19-12-107,
4 19-12-108(a), (b), (c)(intro), (ii) and (iii),
5 19-12-109(b), (d) and (e) and 19-12-110(a)(i), by creating
6 a new paragraph (xvii) and (d) are amended to read:

7

8 **19-12-101. Military courts generally.**

9

10 (a) The military courts of this state are general
11 courts-martial, special courts-martial and summary
12 courts-martial, and are constituted and have cognizance of
13 the same subjects and possess like powers as similar courts
14 provided by the laws and regulations governing the armed
15 forces of the United States, as limited by federal law and
16 regulations applying to the national guard not in federal
17 service. The court shall, as far as practicable, follow the
18 forms and modes of procedure prescribed for the similar
19 courts except that the word "governor" shall be substituted
20 for the word "president" whenever appearing in those laws
21 and regulations. The prosecution in a general, special or
22 summary courts-martial of the militia of this state shall
23 be in the name of the state. The ~~governor, upon advice of~~

1 ~~the~~ adjutant general, shall promulgate or publish rules and
2 regulations covering military courts not inconsistent with
3 the constitution and laws of this state.

4
5 (b) To the extent its provisions are not inconsistent
6 with this chapter, the ~~provisions~~ punitive articles of the
7 Uniform Code of Military Justice, ~~the Military Rules of~~
8 ~~Evidence, the Rules for Courts Martial and the United~~
9 ~~States Manual for Courts Martial~~ in effect at the time of
10 an offense are adopted by the state of Wyoming and shall
11 apply to any member when in a state ~~active~~ duty status,
12 including a status under title 32, United States Code, or
13 active state service status in the same manner as the
14 Uniform Code of Military Justice applies when the member is
15 in active federal service.

16
17 (c) Proceedings under this article shall follow
18 procedures for state criminal courts except as modified by
19 this article or by any rules promulgated under this
20 article.

21
22 ~~(e)~~ (d) The maximum punishment that may be imposed by
23 any ~~courts-martial~~ court-martial shall not exceed ~~that~~ the

1 sentence authorized ~~in title 32 of the United States Code~~
2 ~~although a greater punishment may be authorized by the~~
3 ~~Appendix Twelve of the United States Manual for~~
4 ~~Courts Martial~~ for that or a similar offense in the
5 punitive articles of the Uniform Code of Military Justice
6 unless otherwise specified in this article.

7
8 ~~(d)~~(e) This article applies territorially and
9 extraterritorially to all persons in the military forces of
10 the state when not subject to the Uniform Code of Military
11 Justice and while in a duty status or during a period of
12 time when the member was under lawful order to be in a duty
13 status. The processing charges and all proceedings,
14 including trial, may be conducted without regard to the
15 duty status of the accused.

16
17 (f) Military defense counsel shall be appointed for
18 any accused pursuant to promulgated rules. The
19 qualifications required of counsel shall include admission
20 to practice law in Wyoming or holding a current position as
21 military judge advocate.

22

1 (g) Sentencing in any court-martial shall for any
2 case under this article be by the presiding judge or
3 summary court officer.

4
5 **19-12-102. Apprehension.**

6
7 (a) "Apprehension" means the taking of a member into
8 custody.

9
10 (b) Any person authorized by this code, Chapter 47 of
11 title 10, United States Code, or by regulations issued
12 under either code to apprehend persons subject to this
13 code, ~~any marshal of a courts-martial appointed pursuant to~~
14 ~~the provisions of this code~~ and any civil officer or peace
15 officer of this state having authority to apprehend
16 offenders under the laws of the United States or this
17 state, may do so upon reasonable belief that an offense has
18 been committed and that the person apprehended committed
19 the offense.

20
21 **19-12-103. Warrant of arrest; issuance; contents;**
22 **service.**

23

1 (a) A warrant of arrest for the purposes of securing
2 the presence of accused at any ~~courts-martial~~court-martial
3 proceeding or in execution of a sentence of confinement may
4 be issued by a special or general ~~courts-martial~~
5 court-martial convening authority.

6

7 19-12-104. Convening general, special or summary
8 ~~courts-martial; summary courts-martial limitations.~~

9

10 (a) A general ~~courts-martial~~court-martial may be
11 convened by:

12

13 (i) The governor; or

14

15 (b) A special ~~courts-martial~~court-martial may be
16 convened by:

17

18 (i) The adjutant general; or

19

20 (ii) ~~The commanding~~A general officer of ~~a camp~~
21 ~~or encampment;~~the Wyoming national guard in the same
22 military branch as the accused.

23

1 (c) A summary ~~courts-martial~~ ~~court-martial~~ may be
2 convened by:

3
4 (i) Any person who may convene a general or
5 special ~~courts-martial~~ ~~court-martial~~; or

6
7 (ii) ~~The commanding officer of a company,~~
8 ~~battery, squadron or~~ Any other ~~detachment of the national~~
9 ~~guard~~ person designated in rules promulgated under this
10 article.

11
12 (d) A summary court-martial is an administrative
13 process presided over by a current military judge advocate
14 serving as the summary court officer. A conviction by
15 summary court-martial shall not result in any sentence of
16 confinement nor shall it be considered a criminal
17 conviction.

18
19 **19-12-105. Prosecutions; appeal.**

20
21 (a) All prosecutions under ~~W.S. 19-12-101~~ this
22 article shall be by ~~courts-martial~~ ~~court-martial~~ or
23 appropriate civilian court proceeding, with the judge

1 ~~advocate~~ adjutant general having sole power to determine by
2 which method to proceed.

3

4 (b) ~~Upon the filing of~~ If a complaint is filed in a
5 district court or circuit court of a county wherein the
6 offense is alleged to have occurred, the judge thereof or a
7 magistrate therein may issue warrants.

8

9 (c) ~~In all matters wherein the Uniform Code of~~
10 ~~Military Justice requires the action of a military judge, A~~
11 qualified ~~military judge or in the absence of a qualified~~
12 ~~military judge the county or district court judge~~ under
13 this article or rules promulgated thereunder shall ~~so~~ serve
14 as judge in all general or special courts-martial and be
15 empowered to ~~so~~ act on all matters pertaining to that
16 court.

17

18 (d) ~~Unless~~ The state ~~is~~ shall be represented by a
19 ~~staff~~ judge advocate. If none is available, the district or
20 county attorney shall represent the state and prosecute all
21 cases commenced in the courts.

22

1 (e) To conduct any pretrial hearing required for a
2 general court-martial the adjutant general shall appoint a
3 judge advocate who is not appointed to represent a party in
4 the case.

5
6 ~~(e)~~(f) No sentence of dismissal from the service or
7 dishonorable discharge imposed by a national guard
8 ~~courts-martial~~court-martial shall be executed until
9 approved by the governor. The governor may suspend or set
10 aside part or all of any sentence ~~he~~the governor deems
11 appropriate.

12
13 ~~(f)~~(g) When prosecution has been by general
14 ~~courts-martial~~court-martial, after final judgment,
15 sentencing and approval by the governor, the defendant may
16 appeal to the supreme court of Wyoming in the same manner
17 as appeals from ~~circuit courts to~~ district courts to the
18 supreme court of Wyoming in criminal cases.

19
20 ~~(g)~~(h) When prosecution has been by summary or
21 special ~~courts-martial~~court-martial, after final judgment,
22 sentencing and approval by the convening authority, the
23 defendant may appeal to the district court of the county in

1 which the ~~courts-martial~~court-martial was held in the same
2 manner as appeals from circuit courts to the district
3 courts in criminal cases.

4

5 ~~(h)~~(j) When prosecution has been in the circuit
6 courts, after final judgment and sentencing, the defendant
7 may appeal to the district court in the same manner as in
8 other criminal cases.

9

10 ~~(j)~~(k) If requested by the accused and authorized
11 given the charges and type of court-martial, a jury may be
12 appointed. Any jury appointed shall consist of current
13 Wyoming national guard members of either service. In the
14 event the pool of eligible court members for a national
15 guard court-martial under this article is insufficient to
16 properly impanel the ~~courts-martial~~court-martial, active
17 and reserve members of the United States armed forces may
18 be requested to so serve.

19

20 **19-12-106. Disobedience of order to appear before**
21 **court-martial; issuance of subpoena; warrant of attachment;**
22 **service of warrants; neglecting or refusing to obey**
23 **subpoena or order; confinement of prisoners.**

1

2 (a) When a person served with a copy of
3 ~~courts-martial~~ court-martial charges disobeys a written
4 order from the convening authority to appear before the
5 ~~courts-martial~~ court-martial at a time and place specified,
6 the ~~commander in chief, adjutant general, president of the~~
7 ~~courts-martial~~ convening authority, appointed judge or
8 summary court officer may issue:

9

10 (i) A warrant for the arrest of the person to
11 bring him before the court for trial. The convening
12 authority may confine him in the county jail where the
13 court is convened if confinement is deemed advisable to
14 ~~insure~~ ensure the presence of the alleged offender for
15 trial, or may release the accused on the furnishing of bail
16 in an amount deemed sufficient to ~~insure~~ ensure his
17 presence for trial;

18

19 ~~(b)(ii)~~ The ~~commander in chief, adjutant~~
20 ~~general, president of the courts martial or summary court~~
21 ~~officer may issue~~ Subpoenas, ~~subpoena~~ subpoenas duces tecum
22 and other orders compelling the attendance of witnesses and
23 the production of evidentiary matters.

1

2 ~~(e)~~(b) When a person has been subpoenaed to appear as
3 a witness before any ~~courts-martial~~court-martial and has
4 been paid or tendered the fees and mileage required by law,
5 or a member has been ordered to appear as a witness, and
6 either fails or refuses without justifiable excuse to
7 appear, the ~~commander in chief, adjutant general, president~~
8 ~~of the courts-martial~~convening authority, appointed judge
9 or ~~the~~ summary court officer may issue a warrant of
10 attachment to apprehend and bring the witness before the
11 court to testify as required by the subpoena or order.

12

13 ~~(d)~~(c) Service of warrants, subpoenas and other
14 process issued by the ~~commander in chief, adjutant general,~~
15 ~~president of any courts-martial~~convening authority,
16 appointed judge or summary court officer on any person
17 shall be made by the sheriff, undersheriff or deputy
18 sheriff of the county wherein the court is convened or of
19 the county wherein the person to be served may be found, or
20 it may be served in any county by any officer of the
21 national guard when ordered to do so by the ~~commander in~~
22 ~~chief, adjutant general, president of the courts martial~~
23 convening authority, appointed judge or summary court

1 officer. The individual making service shall endorse the
2 facts of service on the original process and return it to
3 the officer who issued the process.

4

5 ~~(e)~~(d) Any person who willfully and without
6 justifiable excuse neglects or refuses to obey a subpoena
7 or order is guilty of a misdemeanor and may be prosecuted
8 in any court of this state as for other misdemeanors. Upon
9 conviction the offender shall be fined not more than seven
10 hundred fifty dollars (\$750.00), imprisoned in the county
11 jail not to exceed six (6) months, or both.

12

13 ~~(f)~~(e) The sheriff shall keep in confinement any
14 prisoner turned over to him for safekeeping upon written
15 orders of the ~~governor, adjutant general, president of a~~
16 ~~courts-martial~~ convening authority, appointed judge or
17 summary court officer.

18

19 **19-12-107. Jurors of court-martial deemed on duty;**
20 **pay and allowances; witnesses subject to subpoena; witness**
21 **fees and allowances.**

22

1 (a) ~~Members~~ Jurors of a ~~courts-martial~~ court-martial
2 and members of the national guard ordered to appear before
3 a ~~courts-martial~~ court-martial or other court, and members
4 of the national guard tried by ~~courts-martial~~ court-martial
5 or other courts and acquitted, shall be deemed on duty by
6 order of the governor and shall receive the same pay and
7 allowances as provided for members of the national guard
8 when in service by order of the governor.

9

10 (b) Witnesses other than members of the national
11 guard are subject to subpoena by a ~~courts-martial~~
12 court-martial and shall receive the same fees and
13 allowances as provided for witnesses before the district
14 courts of this state.

15

16 **19-12-108. Confinement in county jail; fines.**

17

18 (a) Where punishment by a ~~courts-martial~~
19 court-martial is imprisonment for one (1) year or less,
20 confinement shall be in the county jail of the county
21 wherein the court is convened. The sheriff shall accept the
22 prisoner upon receipt of written order promulgating the
23 sentence of the court.

1

2 (b) Where punishment by a ~~courts-martial~~
3 court-martial is imprisonment for more than one (1) year,
4 the prisoner shall be remanded to the custody of the
5 department of corrections in the same manner as civilians
6 convicted of criminal offenses classified as a felony.

7

8 (c) Fines imposed by a ~~courts-martial~~court-martial,
9 at the option of the president of the ~~courts-martial~~
10 court-martial or the summary court officer, may be
11 collected in the following manner:

12

13 (ii) By immediate payment of the fine in full,
14 in cash, to the ~~president of the courts-martial or summary~~
15 ~~court officer who shall forthwith remit the same to the~~
16 ~~adjutant-general~~deputy director of the Wyoming military
17 department to be paid into the state treasury; or

18

19 (iii) Upon failure of the convicted person to
20 forthwith pay the fine in cash when so ordered, by the
21 commitment of the person to the county jail of the county
22 wherein the court is held ~~until the fine is paid or until~~
23 ~~one (1) day is served for each dollar of the fine imposed~~

1 for five (5) days. If the fine remains unpaid sixty (60)
2 days after release, the convicted person shall be again
3 committed to the county jail of the county wherein the
4 court is held for an additional five (5) days.

5

6 **19-12-109. Immunity of national guard member;**
7 **commission of felony or lesser crime by such member.**

8

9 (b) When any ~~felony crime~~ against the laws of Wyoming
10 or any political subdivision thereof is alleged to have
11 been committed by any member of the national guard, ~~while~~
12 ~~in active state service,~~ upon presentation of the proper
13 warrant he shall be ~~arrested~~ apprehended by ~~the~~ military
14 authorities and ~~immediately~~ surrendered to the proper civil
15 authorities of the county wherein the warrant was issued.

16

17 (d) Nothing herein grants immunity from service of
18 warrants issued upon a charge or complaint alleging the
19 violation of one (1) or more of the offenses set forth in
20 W.S. 19-12-110 nor shall any such immunity prevent
21 prosecution of a member of the national guard by the proper
22 authorities at any time after termination of the period of

1 ~~active state service~~ any duty status for which the immunity
2 was effective.

3
4 (e) No member of the national guard shall be held to
5 answer for a criminal offense in both civilian courts and
6 the military courts of this state. The decision as to under
7 which justice system a member is held to answer is left to
8 the discretion of the ~~district~~ prosecuting attorney for the
9 county in which the offense is alleged to have occurred and
10 the state judge advocate ~~general~~. An impasse in this
11 decision shall be referred to the district court judge for
12 resolution. The decision of the district court judge is
13 final.

14

15 **19-12-110. Trial and punishment for certain offenses**
16 **by members of national guard in state courts.**

17

18 (a) Members of the Wyoming national guard charged
19 with the following offenses may be tried and punished as
20 herein provided:

21

22 (i) Any ~~officer~~ member of the Wyoming national
23 guard who ~~uses~~ is tried and found guilty of the offense of

1 using contemptuous words against the president,
2 vice-president, a member of congress, the secretary of
3 defense, a secretary of a department, a governor or a
4 member of a legislature of any state, territory or other
5 possession of the United States in which ~~he~~the member is
6 on duty or present shall be punished by a fine of not more
7 than seven hundred fifty dollars (\$750.00), imprisonment in
8 the county jail for a term not to exceed six (6) months, or
9 both. Upon a second or subsequent conviction under this
10 paragraph the member shall be fined not less than two
11 hundred fifty dollars (\$250.00) nor more than one thousand
12 dollars (\$1,000.00) to which may be added imprisonment in
13 the county jail for a term not to exceed six (6) months.
14 The fine and sentence on a second or subsequent conviction
15 shall not be suspended;

16
17 (xvii) Any member of the Wyoming national guard
18 who resists or aids in resisting the execution of lawful
19 process in any area declared to be in a state of actual or
20 threatened insurrection, or who aids or attempts the rescue
21 or escape of another from lawful custody or confinement, or
22 who resists or aids in resisting any force ordered out by
23 the governor to execute the laws, to suppress actual or

1 prevent threatened insurrection or to repel invasion is
2 guilty of a felony punishable by imprisonment in the state
3 penitentiary for not less than one (1) year nor more than
4 ten (10) years.

5
6 (d) Any commanding officer of the Wyoming national
7 guard may impose administrative, nonjudicial punishment as
8 described and set forth in article 15 of the Uniform Code
9 of Military Justice and in accordance with the procedure
10 therein set forth except as superseded by rules promulgated
11 under this article unless the accused demands trial by
12 ~~courts-martial~~ court-martial.

13
14 **Section 2.** W.S. 19-12-104(b)(iii), 19-12-109(a) and
15 (c), 19-12-110(a)(ii) through (xvi), (b), (c), (e) and (f)
16 are repealed.

17
18 **Section 3.** This act is effective July 1, 2021.

19
20 (END)