

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

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) and
9 (d) as (e) and by creating new subsections (f) and (g),
10 19-12-102, 19-12-103(a), 19-12-104(a)(intro), (i),
11 (b)(intro), (i) and (ii), (c) and by creating a new
12 subsection (d), 19-12-105(a) through (d), by creating a new

1 subsection (e) and by amending and renumbering (e) through
2 (j) as ((f) through (k), 19-12-106(a) and by amending and
3 renumbering (b) as (a)(ii), (c) as (b), (d) as (c), (e) as
4 (d) and (f) as (e), 19-12-107, 19-12-108(a), (b),
5 (c)(intro), (ii) and (iii), 19-12-109(b), (d) and (e) and
6 19-12-110(a)(i) and creating a new paragraph (xvii), (b)
7 and (d) are amended to read:

8

9 **19-12-101. Military courts generally.**

10

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

1 be in the name of the state. The ~~governor, upon advice of~~
2 ~~the~~ adjutant general, shall promulgate or publish rules and
3 regulations covering military courts not inconsistent with
4 the constitution and laws of this state.

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

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

22

1 ~~(e)~~(d) The maximum punishment that may be imposed by
2 any ~~courts-martial~~court-martial shall not exceed ~~that~~the
3 sentence authorized ~~in title 32 of the United States Code~~
4 ~~although a greater punishment may be authorized by the~~
5 ~~Appendix Twelve of the United States Manual for Courts-~~
6 ~~Martial~~for that or a similar offense in the punitive
7 articles of the Uniform Code of Military Justice unless
8 otherwise specified in this article.

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

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

1

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

5

6 **19-12-102. Apprehension.**

7

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

10

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

21

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

1

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

7

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

10

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

13

14 (i) The governor; or

15

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

18

19 (i) The adjutant general; or

20

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

1

2 (c) A summary courts-martial—court-martial may be
3 convened by:

4

5 (i) Any person who may convene a general or
6 special courts-martial; or

7

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

12

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

19

20 **19-12-105. Prosecutions; appeal.**

21

22 (a) All prosecutions under W.S. 19-12-101—this
23 article shall be by courts-martial—court-martial or

1 appropriate civilian court proceeding, with the judge
2 ~~advocate~~adjutant general having sole power to determine by
3 which method to proceed.

4

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

9

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

18

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

23

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 ~~courts-~~
8 ~~martial-court-martial~~ shall be executed until approved by
9 the governor. The governor may suspend or set aside part or
10 all of any sentence ~~he-~~the governor deems appropriate.

11
12 ~~(f)(g)~~ When prosecution has been by general ~~courts-~~
13 ~~martial-court-martial~~, after final judgment, sentencing and
14 approval by the governor, the defendant may appeal to the
15 supreme court of Wyoming in the same manner as appeals from
16 ~~ecircuit courts to~~ district courts to the supreme court of
17 Wyoming in criminal cases.

18
19 ~~(g)(h)~~ When prosecution has been by summary or
20 special ~~courts-martial-court-martial~~, after final judgment,
21 sentencing and approval by the convening authority, the
22 defendant may appeal to the district court of the county in
23 which the ~~courts-martial-court-martial~~ was held in the same

1 manner as appeals from circuit courts to the district
2 courts in criminal cases.

3

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

8

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

18

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

23

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

8
9 (i) A warrant for the arrest of the person to
10 bring him before the court for trial. The convening
11 authority may confine him in the county jail where the
12 court is convened if confinement is deemed advisable to
13 ~~insure-ensure~~ the presence of the alleged offender for
14 trial, or may release the accused on the furnishing of bail
15 in an amount deemed sufficient to ~~insure-ensure~~ his
16 presence for trial.~~i~~

17
18 (b)(ii) ~~The commander in chief, adjutant~~
19 ~~general, president of the courts-martial or summary court~~
20 ~~officer may issue~~ Subpoenas, ~~subpoena-subpoenas~~ duces tecum
21 and other orders compelling the attendance of witnesses and
22 the production of evidentiary matters.

23

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

11

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

1 facts of service on the original process and return it to
2 the officer who issued the process.

3

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

11

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

17

18 **19-12-107. Jurors of court-martial deemed on duty;**
19 **pay and allowances; witnesses subject to subpoena; witness**
20 **fees and allowances.**

21

22 (a) ~~Members~~ Jurors of a ~~courts-martial~~ court-martial
23 and members of the national guard ordered to appear before

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

7

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

13

14 **19-12-108. Confinement in county jail; fines.**

15

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

22

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

6

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

11

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

17

18 (iii) Upon failure of the convicted person to
19 forthwith pay the fine in cash when so ordered, by the
20 commitment of the person to the county jail of the county
21 wherein the court is held ~~until the fine is paid or until~~
22 ~~one (1) day is served for each dollar of the fine imposed~~
23 for five (5) days. If the fine remains unpaid sixty (60)

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

4

5 **19-12-109. Immunity of national guard member;**
6 **commission of felony or lesser crime by such member.**

7

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

15

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

1

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

12

13 **19-12-110. Trial and punishment for certain offenses**
14 **by members of national guard in state courts.**

15

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

19

20 (i) Any ~~officer~~member of the Wyoming national
21 guard who ~~uses~~is tried and found guilty of the offense of
22 using contemptuous words against the president, vice-
23 president, a member of congress, the secretary of defense,

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

14 *****
 15 STAFF COMMENT
 16 Note: the text inserted into paragraph (i) above was
 17 formerly subsection (b).
 18 *****
 19

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

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

6 *****

7 **STAFF COMMENT**

8 **Note: the text inserted into paragraph (xvii) above was**
9 **formerly subsection (f).**

10 *****

11

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

19

20 **Section 2.** W.S. 19-12-104(b)(iii), 19-12-109(a) and
21 (c), 19-12-110(a)(ii) through (xvi), (b), (c), (e) and (f)
22 are repealed.

23

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

25

1

(END)