

ENROLLED ACT NO. 86, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING  
2021 GENERAL SESSION

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

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

**Section 1.** W.S. 19-12-101(a), (b), by creating a new subsection (c), by amending and renumbering (c) as (d), by renumbering (d) as (e) and by creating new subsections (f) and (g), 19-12-102, 19-12-103(a), 19-12-104(a)(intro), (i), (b)(intro), (i), (ii), (c) and by creating a new subsection (d), 19-12-105(a) through (d), by creating a new subsection (e), by amending and renumbering (e) through (g) as (f) through (h), by renumbering (h) as (j) and by amending and renumbering (j) as (k), 19-12-106(a), by amending and renumbering (b) as (a)(ii), by amending and renumbering (c) and (d) as (b) and (c), by renumbering (e) as (d) and by amending and renumbering (f) as (e), 19-12-107, 19-12-108(a), (b), (c)(intro), (ii) and (iii), 19-12-109(b), (d) and (e) and 19-12-110(a)(i), by creating a new paragraph (xvii) and (d) are amended to read:

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

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

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and regulations. The prosecution in a general, special or summary courts-martial of the militia of this state shall be in the name of the state. The ~~governor, upon advice of the adjutant general,~~ shall promulgate or publish rules and regulations covering military courts not inconsistent with the constitution and laws of this state.

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

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

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

~~(d)~~(e) This article applies territorially and extraterritorially to all persons in the military forces of

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the state when not subject to the Uniform Code of Military Justice and while in a duty status or during a period of time when the member was under lawful order to be in a duty status. The processing charges and all proceedings, including trial, may be conducted without regard to the duty status of the accused.

(f) Military defense counsel shall be appointed for any accused pursuant to promulgated rules. Counsel shall be authorized to practice law in Wyoming and a member in good standing of the bar of the highest court of any state in the United States, admitted to practice in any federal court of the United States or hold a current position as military judge advocate.

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

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

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

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

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

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

**19-12-104. Convening general, special or summary courts-martial; summary courts-martial limitations.**

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

(i) The governor; or

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

(i) The adjutant general; or

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

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

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

(ii) ~~The commanding officer of a company, battery, squadron or~~Any other ~~detachment of the national~~

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guard person designated in rules promulgated under this article.

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

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

(a) All prosecutions under W.S. 19-12-101 this article shall be by courts-martial court-martial or appropriate civilian court proceeding, with the judge advocate adjutant general having sole power to determine by which method to proceed.

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

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

(d) Unless The state is shall be represented by a staff judge advocate. If none is available, the district or

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county attorney shall represent the state and prosecute all cases commenced in the courts.

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

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

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

~~(g)~~(h) When prosecution has been by summary or special ~~courts-martial~~court-martial, after final judgment, sentencing and approval by the convening authority, the defendant may appeal to the district court of the county in which the ~~courts-martial~~court-martial was held in the same manner as appeals from circuit courts to the district courts in criminal cases.

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

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

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

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

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

~~(b)~~(ii) ~~The commander in chief, adjutant general, president of the courts-martial or summary court officer may issue~~ Subpoenas, subpoena ~~subpoenas~~ duces tecum

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and other orders compelling the attendance of witnesses and the production of evidentiary matters.

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

~~(d)~~(c) Service of warrants, subpoenas and other process issued by the ~~commander in chief, adjutant general, president of any courts martial~~ convening authority, appointed judge or summary court officer on any person shall be made by the sheriff, undersheriff or deputy sheriff of the county wherein the court is convened or of the county wherein the person to be served may be found, or it may be served in any county by any officer of the Wyoming national guard when ordered to do so by the ~~commander in chief, adjutant general, president of the courts martial~~ convening authority, appointed judge or summary court officer. The individual making service shall endorse the facts of service on the original process and return it to the officer who issued the process.

~~(e)~~(d) Any person who willfully and without justifiable excuse neglects or refuses to obey a subpoena or order is guilty of a misdemeanor and may be prosecuted in any court of this state as for other misdemeanors. Upon conviction the offender shall be fined not more than seven

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hundred fifty dollars (\$750.00), imprisoned in the county jail not to exceed six (6) months, or both.

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

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

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

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

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

(a) Where punishment by a ~~courts-martial~~ court-martial is imprisonment for one (1) year or less, confinement shall be in the county jail of the county wherein the court is convened. The sheriff shall accept the

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prisoner upon receipt of written order promulgating the sentence of the court.

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

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

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

(iii) Upon failure of the convicted person to forthwith pay the fine in cash when so ordered, by the commitment of the person to the county jail of the county wherein the court is held ~~until the fine is paid or until one (1) day is served for each dollar of the fine imposed for five (5) days. If the fine remains unpaid sixty (60) days after release, the convicted person shall be again committed to the county jail of the county wherein the court is held for an additional five (5) days.~~

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

(b) When any ~~felony-crime~~ or any political subdivision thereof against the laws of Wyoming is alleged to have

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been committed by any member of the Wyoming national guard, ~~while in active state service,~~ upon presentation of the proper warrant he shall be ~~arrested~~apprehended by ~~the~~ military authorities and ~~immediately~~ surrendered to the proper civil authorities of the county wherein the warrant was issued.

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

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

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

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

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(i) Any ~~officer~~member of the Wyoming national guard who ~~uses~~is tried and found guilty of the offense of using contemptuous words against the president, vice-president, a member of congress, ~~the~~ secretary of defense, a secretary of a department, a governor or a member of a legislature of any state, territory or other possession of the United States in which ~~he~~the member is on duty or present shall be punished by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment in the county jail for a term not to exceed six (6) months, or both. Upon a second or subsequent conviction under this paragraph the member shall be fined not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00) to which may be added imprisonment in the county jail for a term not to exceed six (6) months. The fine and sentence on a second or subsequent conviction shall not be suspended;

(xvii) Any member of the Wyoming national guard who resists or aids in resisting the execution of lawful process in any area declared to be in a state of actual or threatened insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the governor to execute the laws, to suppress actual or prevent threatened insurrection or to repel invasion is guilty of a felony punishable by imprisonment in the state penitentiary for not less than one (1) year nor more than ten (10) years.

(d) Any commanding officer of the Wyoming national guard may impose administrative, nonjudicial punishment as described and set forth in article 15 of the Uniform Code of Military Justice and in accordance with the procedure therein set forth except as superseded by rules promulgated

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under this article unless the accused demands trial by ~~courts-martial~~ court-martial.

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

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk