

29B.26 Who may serve on courts-martial.

Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before the courts for trial.

Any warrant officer of or on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before the courts for trial.

Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before the courts for trial, but the enlisted member shall serve as a member of a court only if, before the end of any pretrial session that is held or if none is held before the convening of the court, the accused personally has requested in writing, that enlisted members serve on it. After such a request, the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

In this section, the word “*unit*” means any regularly organized body of the state military forces.

When it can be avoided, a person subject to this code shall not be tried by a court-martial any member of which is junior to the person in rank or grade.

When convening a court-martial, the convening authority shall detail as members of the courts-martial persons who in the convening authority’s opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. A person is not eligible to serve as a member of a general or special court-martial when the person is the accuser or a witness for the prosecution or has acted as investigating officer, staff judge advocate, or as counsel in the same case. If a military judge is not appointed for a special court-martial and if a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade is present and not otherwise disqualified and within the command of the convening authority, the convening authority shall appoint the commissioned officer as president of a special court-martial. Failure to meet this requirement does not divest a military court of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §29B.26; 82 Acts, ch 1042, §13]