

### **35.120 Who may serve on courts-martial.**

- (1) Any commissioned officer of the state military forces is eligible to serve on all courts-martial for the trial of any person subject to this code.
- (2) Any warrant officer of the state military forces is eligible to serve on general and special courts-martial for the trial of any person subject to this code, other than a commissioned officer.
- (3) 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 subject to this code, but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under KRS 35.195 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such request the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third (1/3) of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be assembled 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. For the purposes of this section, the word "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one (1) of them.
- (4) When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to the accused in rank or grade.
- (5) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, 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. No member of the state military forces is eligible to serve as a member of a general or special court-martial when that member is the accuser, a witness, or has acted as investigating officer or as counsel in the same case.

**Effective:** June 25, 2013

**History:** Amended 2013 Ky. Acts ch. 32, sec. 26, effective June 25, 2013. -- Amended 1974 Ky. Acts ch. 108, sec. 5. -- Amended 1970 Ky. Acts ch. 56, sec. 15. -- Created 1954 Ky. Acts ch. 99, sec. 23, effective July 1, 1954.