SEC. ___. CONTINUATION OF WARRANT OFFICERS ON ACTIVE DUTY TO COMPLETE DISCIPLINARY ACTION.

(a) IN GENERAL.—Chapter 33A of title 10, United States Code, is amended by inserting after section 580a following new section:

"§ 580b. Continuation of warrant officers on active duty to complete disciplinary action

"When any action has been commenced against a warrant officer with a view to trying such officer by court-martial and such warrant officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 580a the following new item:

"580b. Continuation of warrant officers on active duty to complete disciplinary action.".

Section-by-Section Analysis

This legislative proposal will amend chapter 33A of title 10, United States Code, by adding a new section 580b to authorize the Secretary of the military department concerned to delay the mandatory separation of a warrant officer subject to discharge under 10 U.S.C. 580 until completion of the court-martial process. This new section would be consistent with 10 U.S.C. 639, which allows officers in the grade of second lieutenant (or ensign) and above to be retained on active duty pending completion of disciplinary action.

Currently, the U.S. Code does not have a provision similar to 10 U.S.C. 639 applicable to regular warrant officers. As such, there are instances where a warrant officer could be processed for separation under 10 U.S.C. 580 for having twice failed selection for promotion at the same time he or she is facing trial by court-martial under the Uniform Code of Military Justice (UCMJ). In those instances, the Army must rely on Article 2 of the UCMJ (10 U.S.C. 802) to maintain jurisdiction over the warrant officer.

This legislative change will remove a potential jurisdictional challenge by warrant officer defendants who could argue that, by operation of law, 10 U.S.C. 580 terminates the Army's jurisdiction over the defendant once he or she twice fails selection for promotion. Although Article 2, UCMJ, and the common law establish continuing jurisdiction over Service members held on active duty with a view toward court-martial under such circumstances, this legislative proposal should dispel any possible misunderstanding in that respect.

Budget Implications: There are no budget implications to appropriated funding. It does not affect personnel end strength or assignment actions.

Changes to Existing Laws: This proposal would add new section 580b to title 10, United States Code (see legislative text for text of new section).