

39-6-44 Voting by military court members -- Procedure -- Presumption of innocence -- Reasonable doubt -- Burden of proof.

- (1)
 - (a) Voting by members of a military court on the findings and on the sentence, and upon questions of challenge, are by secret written ballot.
 - (b) The junior member of the court counts the votes.
 - (c) The count shall be reviewed by the president, who shall immediately announce the result of the ballot to the members of the court.
- (2)
 - (a) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings.
 - (b) A ruling made by the military judge upon a question of law or an interlocutory question, other than the factual issue of mental responsibility of the accused, is final and is the ruling of the court. However, the military judge may change the ruling at any time during the trial.
- (3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court that:
 - (a) the accused must be presumed innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;
 - (b) if there is reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused, and he shall be acquitted;
 - (c) if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree, as to which there is no reasonable doubt; and
 - (d) the burden of proof to establish the guilt of the accused beyond a reasonable doubt is on the state.
- (4)
 - (a) Subsections (1), (2), and (3) do not apply to a court composed of a military judge only, as the military judge of a court determines all questions of law and fact arising during the proceedings. If the accused is convicted, the judge imposes the sentence.
 - (b) The military judge of a court shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact are included.

Enacted by Chapter 210, 1988 General Session