

39-6-58 Convening authority review -- Action by governor final -- SJA review -- Appeal of final action.

- (1) When the governor is the convening authority, the governor's action on the review of a record of trial is final.
- (2) The state judge advocate shall review the record of trial in each case prior to final action being taken.
- (3) The SJA shall make a written review and recommendation on legal issues to the convening authority for its consideration prior to final action in any case.
- (4) In a case subject to review by the SJA under this section, the SJA shall submit an opinion regarding any errors committed during the trial and an analysis of the legal effect of the error to the convening authority prior to its affirmation and action regarding the findings and sentence in the case.
- (5) The convening authority may affirm only findings of guilty and the sentence or part of the sentence that:
 - (a) is correct in law and fact; and
 - (b) should be approved, based on the entire record and the advice of the SJA, and any rebuttal submitted by the accused or defense counsel.
- (6) In considering the record, the convening authority may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the testimony of the witnesses.
- (7) If the convening authority sets aside the findings and sentence:
 - (a) a rehearing may be ordered, except when the decision to set aside is based on a lack of sufficient evidence in the record to support the findings; or
 - (b) if a rehearing is not ordered, the charges shall be dismissed.
- (8)
 - (a) Final action approved by the convening authority may be appealed directly to the Utah Court of Appeals.
 - (b) Notice of appeal shall be filed within 30 days after the final action has been taken by the convening authority.

Amended by Chapter 287, 2008 General Session