39-6-1 Title.
This chapter is known as the "Utah Code of Military Justice," and may also be cited as the "UtCMJ."

Amended by Chapter 70, 2015 General Session

39-6-2 Definitions.
As used in this chapter:
(1) "Accuser" means a person who:
   (a) signs and swears to charges;
   (b) directs that charges nominally be signed and sworn to by another; or
   (c) any other person who has an interest other than an official interest in the prosecution of the accused.
(2) "Commanding officer" means both a commissioned officer and a warrant officer designated as a commander.
(3) "Commissioned officer" includes a commissioned warrant officer.
(4) "Convening authority" means the governor or the adjutant general.
(5) "Duty status other than state active duty" means any other type of duty, and includes going to and returning from the duty.
(6) "Enlisted member" means a person in an enlisted grade.
(7) "Grade" means a step or degree in a graduated scale of office or military rank, established and designated as a grade by law or regulation.
(8) "Legal officer" means any commissioned officer of the organized National Guard of the state designated to perform legal duties for a command.
(9) "Major command" or "MACOM" means a major subdivision of the Utah National Guard.
(10) "Military" means any or all of the armed forces of the United States.
(11) "Military court" means a court-martial, a court of inquiry, or a provost court.
(12) "Military judge" means a qualified staff judge advocate officer of a military court detailed under Section 39-6-20.
(13) "National Guard" means the Utah Army and Air National Guard, including part-time and full-time active guard and reserve (AGR), and includes the Utah unorganized militia when called to active duty by the governor of the state.
(14) "Officer" means commissioned or warrant officer.
(15) "Rank" means the order of precedence among members of the armed forces.
(16) "State active duty" means full-time duty in the active military service of the state under an order of the governor, issued pursuant to the governor's authority, and includes going to and returning from the duty.
(17) "State judge advocate" or "SJA" means the commissioned judge advocate general's corps officer responsible for supervising the delivery of legal services in the National Guard.
(18) "State staff judge advocate" or "SSJA" means the commissioned judge advocate general's corps officer appointed as the senior legal officer for the Utah National Guard.
(19) "Superior commissioned officer" means a commissioned officer superior to another in rank or command.
(20) "UtCMJ" means Title 39, Chapter 6, Utah Code of Military Justice.
39-6-3 Persons subject to chapter.
(1) The following persons are subject to this chapter:
   (a) all members of the National Guard, including full-time members serving under Title 32, United States Code;
   (b) all other persons lawfully ordered to duty in or with the National Guard or the unorganized militia, from the dates they are required by the terms of the order or other directive;
(2)
   (a) If there is a military activation by the federal government, all activated persons who would otherwise be under the jurisdiction of this chapter are subject to concurrent jurisdiction under federal and state law.
   (b) Persons under this subsection may be tried for offenses occurring during activation and after release from federal service, while within the period of an applicable statute of limitations.

Enacted by Chapter 210, 1988 General Session

39-6-4 Fraudulently obtained discharge -- Desertion.
(1) A person discharged from the Utah National Guard who is later charged with having fraudulently obtained the discharge is subject to trial by a military court on that charge.
(2) After apprehension, the person is subject to this chapter while in military custody for trial. Upon conviction of that charge the person is subject to trial for all offenses under this chapter committed prior to the fraudulent discharge.
(3) A person who has deserted from a military unit, which act would subject the person to the jurisdiction of this chapter, is not relieved from the jurisdiction of this chapter due to a separation from any later period of service.

Amended by Chapter 131, 2018 General Session

39-6-5 Application of chapter to persons in and without state -- Military courts held without the state.
(1) This chapter applies to all persons:
   (a) subject to this chapter within the state; and
   (b) otherwise subject to this chapter while serving outside the state, and while going to and returning from the service outside the state, as if they were serving inside the state.
(2) Military courts may be convened and held in units of the National Guard while those units are serving without the state, with the same jurisdiction and powers as to persons subject to this chapter as if the proceedings were held within the state. Offenses committed without the state may be tried and punished either within or without the state, as military necessity dictates.

Enacted by Chapter 210, 1988 General Session

39-6-6 State judge advocate -- Appointment -- Qualifications -- Duties -- Assistants.
(1) The adjutant general shall appoint an officer of the National Guard as the state judge advocate. The officer shall be a member of the Utah State Bar, a United States federal court, branch qualified, and designated as a staff judge advocate officer.
(2) The state judge advocate is the principal military legal advisor and shall, in connection with rendering legal advice to the adjutant general, prepare pretrial advice, a post-trial review, and act as legal advisor to the adjutant general on all matters involving military justice, the Utah Manual for Military Courts, and the Utah Code of Military Justice.

(3) The adjutant general may appoint assistant state judge advocates as considered necessary. They shall be officers of the National Guard, members of the Utah State Bar, branch qualified, and designated as staff judge advocate officers.

(4) The SJA or an assistant shall make frequent inspections of military units throughout the state to supervise the administration of military justice.

(5) The convening authority shall review directly with the SJA all matters relating to the administration of military justice and administrative actions. The assistant state judge advocate or legal officer of any command may communicate directly with the assistant state judge advocate or legal officer of a superior or subordinate command, or with the SJA.

(6) A person who has acted as a member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, may not subsequently act as assistant state judge advocate, SJA, or legal officer to any reviewing authority upon the same case.

Amended by Chapter 287, 2008 General Session

39-6-7 Apprehension.

(1) "Apprehension" means the taking of a person into custody by competent authority, with or without a warrant.

(2) A person authorized under this chapter or rules made under it to apprehend persons subject to this chapter, any provost marshal of a military court appointed under this chapter, and any peace officer authorized by law, may apprehend persons subject to this chapter upon probable cause to believe that an offense has been committed and the person to be apprehended committed the offense.

(3) Commissioned officers, warrant officers, and noncommissioned officers may quell disorderly conduct among persons subject to this chapter and may apprehend those persons who are taking part.

Amended by Chapter 15, 1989 General Session

39-6-8 Arrest.

(1) " Arrest" means the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within a specified area.

(2) An enlisted member may be ordered into arrest or confinement by any commanding officer by an order, oral or written, delivered in person or through persons subject to this chapter, or through a person authorized by this chapter to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(3) A commissioned officer or warrant officer may be ordered apprehended, or ordered into arrest or confinement, only by a commanding officer to whose authority he is subject, and only by an order, oral or written, delivered in person or by another commissioned officer. The authority to order the person apprehended or into arrest or confinement may not be delegated.

(4) A person may not be apprehended or placed under arrest or confinement except upon probable cause.
(5) This section does not limit a person authorized to apprehend offenders in his securing the custody of an alleged offender until the proper authority may be notified.

Enacted by Chapter 210, 1988 General Session

39-6-9 Confinement.
(1) "Confinement" means the physical restraint of a person.
(2) 
(a) A person subject to this chapter, who is charged with an offense under this chapter, may be ordered into arrest or confinement, as circumstances require.
(b) When a person subject to this chapter is placed into arrest or confinement prior to trial, action shall be taken immediately to notify him of the specific offense charged against him, and to either try the person, or dismiss charges against him and release him.
(3) Confinement before, during, or after trial by a military court shall be in either a guard house or a civilian jail, or other penal facility determined by the governor or his designee.

Enacted by Chapter 210, 1988 General Session

39-6-10 Parties under obligation to keep a prisoner -- Reporting.
(1) A provost marshal, commander of a guard, master at arms, warden, keeper, sheriff, or officer of a city or county jail or other jail designated under Section 39-6-9, may not refuse to receive or keep any prisoner committed to his charge if the committing person provides a statement signed by him, indicating the offense charged against the prisoner.
(2) Any party under Subsection (1) charged with keeping a prisoner shall within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the nature of the offense charged against him, and the name of the person who ordered or authorized the commitment.

Amended by Chapter 15, 1989 General Session

39-6-11 Person confined prior to trial -- Punishment limitations.
(1) Subject to Section 39-6-9, a person in confinement prior to trial may not be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him.
(2) The arrest or confinement imposed on a prisoner may not be more rigorous than necessary to ensure the prisoner's presence. However, he may be:
(a) subjected to minor punishment during that period for discipline violations; and
(b) required to perform labor as necessary for the policing and sanitation of his living quarters, mess facilities, and the area immediately adjacent to these areas, or as otherwise designated by regulations governing the housing of a prisoner.

Amended by Chapter 9, 1988 Special Session 2
Amended by Chapter 9, 1988 Special Session 2

39-6-12 Person accused of offense against civilian -- Sentences of military and civilian courts.
(1) Under this chapter, a person on duty and subject to this chapter who is accused of an offense against a civilian person may be delivered, upon request, to the civilian authority for judicial proceedings.
(2)  
(a) When a person under sentence imposed by a military court is delivered to a civilian authority under this section, and the person is convicted in a civilian court, the execution of the sentence of the military court is interrupted.  
(b) After the person has completed the sentence imposed by the civilian court, upon request of military authority, he shall be returned to military custody for completion of his military court sentence.  

Enacted by Chapter 210, 1988 General Session  

39-6-14 Nonjudicial punishment.  
(1) The governor and the adjutant general of Utah may prescribe regulations governing the administration of nonjudicial punishment. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by a civilian court of competent jurisdiction.  
(2) A service member subject to this chapter may request trial by military court in lieu of nonjudicial punishment at any time prior to imposition of nonjudicial punishment.  
(a) Upon receipt of a timely request for trial by military court in lieu of nonjudicial punishment, the commanding officer may grant the request, or deny the request and continue with nonjudicial punishment proceedings. If the commander denies the member's request for trial by military court, the commander may not impose limitations on personal liberty as a punishment under nonjudicial punishment proceedings. For purposes of this section, punishments imposing limitations on personal liberty include restriction to specific limited areas and extra duties.  
(b) Denial of a request for trial by military court in lieu of nonjudicial punishment does not create a private right of action and is not subject to judicial review.  
(3) Any commanding officer in the Utah National Guard may, in addition to a reprimand, impose one or more of the punishments under this section without the intervention of a military court. Forfeiture of pay shall be calculated based on the monthly amount a service member would receive as base pay if on active duty. If a reduction of pay grade is imposed, forfeiture of pay is based on the grade to which the service member was reduced even if the reduction was suspended.  
(4) Punishment imposed by the governor, a general officer, or a full colonel upon officers within the general officer's or full colonel's command may include:  
(a) forfeiture of not more than one-half of one month's pay per month for three months; and  
(b) restriction to specific limited areas, with or without suspension from duty, for not more than 60 consecutive days.  
(5) Punishment imposed by the governor, a general officer, or a full colonel upon enlisted personnel within the general officer's or full colonel's command may include:  
(a) forfeiture of not more than one-half of one month's pay per month for two months;  
(b) reduction of one or more pay grades if the imposing commander holds promotion authority over the grade from which the enlisted person was demoted, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;  
(c) extra duties, including fatigue or other duties, for not more than 60 consecutive days; and  
(d) restriction to specific limited areas, with or without suspension from duty, for not more than 60 consecutive days.  
(6) Punishment imposed by a commander of the grade of lieutenant colonel or major upon enlisted personnel within the lieutenant colonel's or major's command may include:  
(a) forfeiture of not more than one-half of one month's pay per month for two months;  


(b) reduction of no more than two pay grades if the imposing commander holds promotion authority over the grade from which the enlisted person was demoted;
(c) extra duties, including fatigue or other duties, for not more than 45 consecutive days; and
(d) restriction to specific limited areas, with or without suspension of duty, for not more than 45 consecutive days.

(7) Punishment imposed by a commander of the grade of captain or lieutenant upon enlisted personnel within the captain's or lieutenant's command may include:
(a) forfeiture of not more than one-half of one month's pay for one month;
(b) extra duties, including fatigue or other duties, for not more than 30 consecutive days;
(c) restriction to specific limited areas, with or without suspension from duty, for not more than 30 consecutive days; and
(d) reduction of one pay grade if the imposing commander holds promotion authority over the grade from which the enlisted person was demoted.

(8) Punishments of restriction to specific limited areas and extra duty may be combined to run concurrently, but the combination may not exceed the maximum duration imposable for extra duty.

(9)
(a) The imposing commander or a successor in command may, at any time, suspend by probation:
   (i) all or any part of the amount of the unexecuted punishment; and
   (ii) a reduction in grade or a forfeiture imposed, whether or not executed.
(b) The imposing commander or a successor in command shall set the terms of probation for any suspended punishment.
(c) The imposing commander or a successor in command may, at any time, remit or mitigate any part or amount of the unexecuted punishment. The imposing commander or a successor in command may also set aside in whole or in part the findings, punishment, or both, whether executed or unexecuted, and restore all rights, privileges, and affected property.
(d) The imposing commander or a successor in command may mitigate reduction in grade to forfeiture of pay. Extra duties may be mitigated to restriction.
(e) A mitigated punishment may not span a greater period of time than the original punishment.
(f) When mitigating a reduction in grade to forfeiture of pay, the amount of the forfeiture may not exceed the maximum allowable forfeiture the imposing commander could have originally imposed.

(10)
(a) A service member punished under this section may appeal to the next superior commander in the service member's chain of command. The next superior commander shall conduct a de novo review of both the findings and punishment under procedures provided by regulation. The next superior commander may modify or set aside the findings or punishment, having the same options afforded the imposing commander as described in this section. In no case may the next superior commander increase the severity of the findings or the amount of punishment originally imposed.
(b) If two levels of command exist above the imposing commander, the service member, having exhausted the service member's first level of appeal, may appeal to the next superior commander. If the matter originates with the governor, the adjutant general, or one level of command below the adjutant general, no right to a second appeal exists. The decision of the adjutant general on an appeal of nonjudicial punishment is final and is not subject to further appeal or judicial review.
(c) The decision of the governor or the adjutant general to impose nonjudicial punishment upon a
service member is final and is not subject to further appeal or judicial review.
(d) The imposing commander shall promptly forward any appeal to the next superior commander.
   During the course of the appeal, the imposing commander may require the appellant to
   submit to the imposed punishment.
(11) A superior commander shall first obtain a legal review from a judge advocate of the Utah
   National Guard before acting on an appeal from any of the following imposed punishments:
   (a) forfeiture of more than seven day’s pay;
   (b) reduction of one or more pay grades;
   (c) extra duties for more than 14 days; or
   (d) restriction for more than 14 days.
(12) Punishments imposed under this section, except forfeiture of pay, may not extend beyond the
   termination of the duty status of the punished individual.

Repealed and Re-enacted by Chapter 60, 2012 General Session

39-6-15 Military court -- Composition.
(1) In the National Guard that is not in federal service, there is a military court to hear matters
   designated under the UtCMJ.
(2) The court shall be composed of:
   (a) a military judge and not fewer than three members; or
   (b) a military judge, if before the court is assembled, the accused, knowing the identity of the
       military judge and after consultation with his defense counsel, requests in writing a court
       composed only of a military judge, and the military judge approves the request.

Amended by Chapter 70, 2015 General Session

39-6-16 Military court -- Jurisdiction.
(1)
   (a) Subject to Subsections (2) and (3), a military court in this state has jurisdiction to try persons
       subject to this chapter for any offense punishable by this chapter.
   (b) The military court may, under limitations the governor may prescribe, and under applicable
       state and federal regulations governing punishment, impose any punishment not prohibited by
       this chapter or state law, including the issuance of a bad conduct discharge, when the court is
       in session to consider a penalty.
(2) Each major command component of the National Guard has military court jurisdiction over all
   persons subject to this chapter. The exercise of this jurisdiction by one command component
   over members of another shall be in accordance with regulations prescribed by the governor.
(3) Members of the Utah National Guard or the unorganized militia in federal service are subject to
   the federal Uniform Code of Military Justice and all federal and state laws pertaining to them,
   until released back to state control.

Enacted by Chapter 210, 1988 General Session

39-6-17 Bad conduct discharge or dismissal -- Approval by governor.
(1) A sentence imposing dismissal or bad conduct discharge against a member of the National
    Guard who is not in federal service may not be executed until it is approved by the governor.
(2) A discharge or dismissal may not be imposed by any military court unless a complete written record of the proceedings has been made and is available for consideration of the military court.

Amended by Chapter 15, 1989 General Session

39-6-18 Convening military court.
A military court may be convened in the National Guard, while it is not in the federal service, by the governor or adjutant general.

Enacted by Chapter 210, 1988 General Session

39-6-19 Persons who may serve on a military court.
(1) A commissioned officer off or on duty with the National Guard may serve on a military court for the trial of any person brought before the court for trial.
(2) A warrant officer off or on duty with the National Guard may serve on a military court for the trial of any person, other than a superior commissioned officer, who is brought before the court for trial.
(3)
(a) An enlisted member of the National Guard who is not a member of the same unit as the accused may serve on a military court for the trial of any enlisted member brought before the court for trial.
(b) However, an enlisted member may serve as a member of a court only if before the conclusion of a session called by the court under Section 39-6-32, or in the absence of the session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on the court.
(c) If the request is made under Subsection (3)(b), the accused may not be tried by the military court when enlisted members comprise less than 1/2 of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies.
(d) If the members cannot be obtained, the court may be assembled and trial held without them, but the convening authority shall make a detailed written explanation of why they could not be obtained. This statement shall be appended to the court record.
(e) "Unit" means any regularly organized major command (MACOM) of the National Guard.
(4)
(a) A person subject to this chapter shall be tried by a military court, but no member may be junior to him in rank or grade.
(b) When an authority convenes a military court, it shall detail as members of the court those persons who in his opinion are best qualified for the duty by age, education, training, experience, length of service, and judicial temperament.
(c) A member is not eligible to serve as a member of a military court when he is the accuser or a witness in the case or has acted as investigating officer or as counsel in the same case.

Amended by Chapter 15, 1989 General Session

39-6-20 Military judge -- Qualifications -- Designation for detail.
(1) The authority convening a military court shall, subject to regulations made by the governor, detail a military judge to preside over each open session of the court.
(2) A military judge shall be:
   (a) a commissioned officer;
   (b) a member of the Utah State Bar;
   (c) a member of the bar of a federal court; and
   (d) certified as qualified for this duty by the state judge advocate.

(3)
   (a) The military judge of a military court shall be designated by the state judge advocate or the
       SJA's designee for detail by the convening authority.
   (b) Unless the military court was convened by the governor, neither the adjutant general nor
       the adjutant general's staff may prepare or review any report concerning the effectiveness,
       fitness, or efficiency of the detailed military judge that relates to the judge's performance of
       duty as a military judge.

(4) A person is not eligible to act as a military judge in a case if the person:
   (a) is the accuser;
   (b) is a witness in the case;
   (c) has acted as investigating officer; or
   (d) is a counsel in the same case.

(5) The military judge of a court may not:
   (a) consult with the members of the court, except in the presence of the accused, trial counsel,
       and defense counsel; or
   (b) vote with the members of the court.

Amended by Chapter 287, 2008 General Session

39-6-21 Military court -- Duties of convening authority.
  Under regulations the governor may prescribe, the convening authority of a military court or
  court of inquiry:
  (1) shall detail or employ qualified court reporters, who shall record the proceedings of and
      testimony taken before that court; and
  (2) may detail or employ interpreters to interpret for the court.

Enacted by Chapter 210, 1988 General Session

39-6-22 Military court members -- When excused -- Trial procedure.
(1) A member of a military court may not be absent or excused after the court has been assembled
    for the trial of the accused, except because of physical disability, the result of a challenge, or for
    good cause by order of the convening authority.

(2)
   (a) When a military court other than a court composed solely of a military judge is reduced to
       fewer than four members, the trial may not proceed unless the convening authority details
       new members sufficient to provide not fewer than four members.
   (b) When the new members have been sworn, the trial may proceed with the new members
       present after the recorded evidence previously introduced before the members of the court
       has been read to the court in the presence of the military judge, the accused, and the counsel
       for the prosecution and defense.

Amended by Chapter 15, 1989 General Session
39-6-23 Military court -- Charges and specifications -- Contents -- Notification of accused.
(1) Charges and specifications shall be signed by a person subject to this chapter under oath before a person authorized to administer oaths and shall state that:
(a) the person signing has personal knowledge of, or has investigated, the matters set forth in the document; and
(b) the matters set forth are true to the best of his knowledge and belief.
(2)
(a) Upon the preferring of charges, the appropriate authority shall take action immediately to determine what disposition should be made in the interest of justice and discipline.
(b) The accused shall be informed of the charges against him as soon as practicable.

Enacted by Chapter 210, 1988 General Session

39-6-24 Person charged -- Limits on evidence obtained from other persons.
(1) A person subject to this chapter may not:
(a) compel any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him;
(b) interrogate, or request any statement from an accused or a person suspected of an offense, without first informing him of the nature of the accusation and advising him that he is not required to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him may be used as evidence against him in a trial by military court; and
(c) compel any person to make a statement or produce evidence before any military court, if the statement or evidence is not material to the issue before the court and may tend to degrade him.
(2) A statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may not be received in evidence against him in a trial by a military court.

Enacted by Chapter 210, 1988 General Session

39-6-26 Charges to be forwarded to governor or adjutant general.
When a person is held for trial by military court, the commanding officer shall forward the charges, together with the investigation and related papers, to the governor or the adjutant general within five working days, excluding holidays, after the accused is ordered into arrest or confinement.

Enacted by Chapter 210, 1988 General Session

39-6-27 Review of charge by SJA -- Corrections to charges.
(1)
(a) Before directing the trial of any charge by a military court, the convening authority shall refer it to the SJA for consideration and advice.
(b) The convening authority may not refer a charge to a military court for trial unless he or she has found that the charge alleges an offense under this chapter and is warranted by sufficient evidence, as indicated in the report of the investigation.
(2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications as necessary may be made to conform to the evidence.

Amended by Chapter 287, 2008 General Session

39-6-28 Service of charges on accused.
(1) The trial counsel to whom charges are referred for trial shall cause to be served upon the accused a copy of the charges to be tried.
(2) A person may not, against his objection, be brought to trial or be required to participate by himself or with counsel in a session called by the military judge under Section 39-6-32, in a military court case, within five days after the service of charges upon him.

Enacted by Chapter 210, 1988 General Session

39-6-29 Court procedures -- Regulations by governor.
(1) In cases subject to or brought under this chapter, before military courts, or before other military tribunals, the procedure, including elements of proof, may be prescribed by the governor by regulations.
(2) The regulations shall, as the governor considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state. However, the regulations may not be contrary to or inconsistent with this chapter.

Enacted by Chapter 210, 1988 General Session

39-6-30 Military court findings -- Prohibition of censuring or influencing court actions -- Military court member's performance.
(1) An authority convening a military court, or any other commanding officer, or officer serving on the staff of any of these persons, may not censure, reprimand, or admonish the court or any member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or any other function carried out in the proceeding.
(2) A person subject to this chapter may not attempt to coerce, or by any unauthorized means influence the action of:
   (a) the military court or any other military tribunal or any member of these in their arriving at the findings or sentence in any case; or
   (b) any convening, approving, or reviewing authority with respect to his judicial acts.
(3) Subsection (2) does not apply to:
   (a) general instructional or informational courses in military justice, if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of a military court; or
   (b) statements and instructions given in open court by the military judge, the president of a military court, or counsel.
(4) In preparing an effectiveness, efficiency, or fitness report, or any other report or document used in whole or in part for determining whether a member of the National Guard is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the National Guard, or in determining whether a member should be retained in an active status, a person subject to this chapter may not:
   (a) consider or evaluate the performance of duty of any member of a military court; or
(b) give a less favorable rating or evaluation of any member of the National Guard because of the zeal with which the member, as counsel, represented any accused before a military court or before any other proceeding authorized by this chapter.

Enacted by Chapter 210, 1988 General Session

39-6-31 Military court -- Prosecutions in state name -- Right to defense trial counsel.
(1) The trial counsel of a military court prosecutes in the name of the state, and shall prepare the record of the proceedings under the direction of the court.

(2) (a) The accused has the right to be represented in his defense before a military court by civilian counsel if provided by him at no expense to the state, or by military counsel of his own selection if reasonably available.

(b) If the accused has counsel of his own choosing, the defense counsel and any assistant defense counsel who were detailed shall act as the associate counsel to the counsel for the accused if the accused desires. Otherwise, detailed counsel shall be excused by the military judge.

(3) In a court proceeding resulting in a conviction, the defense counsel may forward for attachment to the record of proceedings a brief of matters that should be considered on behalf of the accused on review, including any objection to the contents of the record.

(4) An assistant trial counsel of a military court may, under the direction of the trial counsel, or as trial counsel when he is so qualified, perform any duty imposed by law, regulation, or the custom of the service on the trial counsel of the court. An assistant trial counsel of a military court may perform any duty of the trial counsel.

(5) An assistant defense counsel of a military court may, under the direction of the defense counsel or when he is qualified to be the defense counsel, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Amended by Chapter 110, 1993 General Session

39-6-32 Military court -- Session -- Procedures.
(1) After the service of charges has been referred for trial to a military court composed of a military judge and members, the military judge may, subject to Section 39-6-28, call the court into session. The session shall be made a part of the record, and shall be in the presence of the accused, the defense counsel, and the trial counsel.

(2) The session may be conducted without the presence of the members. A session under this subsection may be conducted for the following purposes:

(a) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) hearing and ruling upon any matter a military judge under this chapter may rule upon, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) holding the arraignment and receiving the pleas of the accused, if permitted by regulations prescribed by the governor or adjutant general; or

(d) performing any other procedural function that may be performed by the military judge under this chapter or under rules prescribed under Section 39-6-39 and which does not require the presence of the members of the court.
(3) When the members of a military court deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, and the military judge.

Enacted by Chapter 210, 1988 General Session

39-6-33 Military court -- Continuance.

The military judge may, upon good cause shown, grant a continuance to trial or defense counsel for a stated period of time, when a continuance appears to be just.

Amended by Chapter 15, 1989 General Session

39-6-34 Military court -- Challenge for cause -- Peremptory challenge.

(1) The military judge and members of a military court may be challenged by the accused or the trial counsel for cause stated to the court. The military judge of the court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall be presented and decided before those by the accused are offered, unless the judge determines otherwise.

(2) Each accused and the trial counsel are entitled to one peremptory challenge, but the military judge may not be challenged except for cause. The military judge in his discretion may grant additional peremptory challenges where appropriate.

Enacted by Chapter 210, 1988 General Session

39-6-35 Military court -- Oath or affirmation.

(1) Before performing their respective duties, military judges, interpreters, members of the court, the trial counsel, the assistant trial counsel, the defense counsel, the assistant defense counsel, and court reporters shall take an oath or affirmation to perform their duties faithfully.

(2)

(a) The governor shall prescribe by regulation the oath or affirmation, the time and place of taking either of them, the manner of recording the taking, and whether the oath is taken for all cases in which these duties are to be performed or for a specific case.

(b) The regulations may provide that an oath or affirmation to faithfully perform any of the duties under Subsection (1) except that of court reporter, be taken at any time by any judge advocate, legal officer, or other person certified as qualified or competent for the duty. The regulations may also provide that an oath under this subsection need not again be taken at the time the judge advocate, legal officer, or other person having taken an oath under this section is detailed to that duty.

(c) Each witness in a military court shall be examined on oath or affirmation.

Enacted by Chapter 210, 1988 General Session

39-6-36 Desertion or absence without leave and other offenses -- Time limit on trial -- Tolling of time limits.

(1) A person charged with desertion or absence without leave may be tried and punished at any time, within four years after the preferral of charges.
(2) Except under Subsection (1), a person charged with any offense is not liable to be tried by a military court or punished under Section 39-6-14 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising jurisdiction as a military court convening authority.

(3) Periods when the accused was outside the state's jurisdiction to apprehend him, or when he is in the custody of civilian authorities, are excluded in computing limitations of time under this section.

Amended by Chapter 189, 2014 General Session

**39-6-37 Second trial on an offense prohibited.**

(1) A person may not, without his written consent, be brought to trial a second time in any military or civilian court of the state for the same offense.

(2) A proceeding in which an accused has been found guilty by a military court upon any charge or specification, is not a trial under this section until the finding of guilty has become final and the review of the case has been completed.

(3) A proceeding that, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial under this section.

Enacted by Chapter 210, 1988 General Session

**39-6-38 Plea of not guilty -- Accepted -- Withdrawn.**

(1) A plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty, if the accused:

(a) after arraignment makes an irregular pleading;

(b) after a plea of guilty raises a matter inconsistent with the plea;

(c) has apparently entered the plea of guilty improvidently or through lack of understanding of its meaning and effect; or

(d) fails or refuses to plead.

(2)

(a) A plea of guilty by the accused may not be accepted to any charge or specification alleging an offense for which a determinate term of one year confinement may be imposed.

(b) If a plea of guilty has been accepted by the military judge, a finding of guilty, if permitted by regulations promulgated by the governor, shall be entered immediately without vote and constitutes the finding of the court.

(c) If the plea of guilty is withdrawn prior to announcement of the sentence, the proceedings shall continue as though the accused had pleaded not guilty.

Enacted by Chapter 210, 1988 General Session

**39-6-39 Obtaining evidence and witnesses -- Procedure.**

(1) The trial and defense counsel, and the military court, have equal opportunity to obtain witnesses and other evidence under regulations the governor, adjutant general, or the applicable rules of civil and criminal procedure or state or federal law prescribe.

(2) The military court judge may:
(a) issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;
(b) issue subpoenas duces tecum and other subpoenas;
(c) enforce by attachment the attendance of witnesses and the production of books and papers; and
(d) sentence for refusal to be sworn or to answer, as under civil procedure.

(3) Process issued in a military court to compel witnesses to appear and testify and to compel the production of other evidence may be served within the boundaries of the state.

Enacted by Chapter 210, 1988 General Session

39-6-40 Offenses against the state by person not subject to chapter.

A person not subject to this chapter is guilty of an offense against the state if he willfully neglects or refuses to appear, refuses to qualify as a witness or to testify, or refuses to produce any evidence which that person may have been legally subpoenaed to produce, after he has been:
(1) subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before the court; and
(2) paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the district courts of the state.

Amended by Chapter 9, 1988 Special Session 2
Amended by Chapter 9, 1988 Special Session 2

39-6-41 Contempt -- Penalty.

(1) A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any disorderly conduct.
(2) The punishment may not exceed confinement for three days in the county jail of the county where the proceedings are held, or a fine of $200, or both.

Enacted by Chapter 210, 1988 General Session

39-6-42 Depositions -- Procedure.

(1) After charges have been signed under Section 39-6-23, any party may take oral or written depositions unless the military judge hearing the case, or if the case is not being heard, an authority competent to convene a military court for the trial of those charges prohibits the depositions for good cause.
(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.
(3) Depositions may be taken before and authenticated by any military or civil officer authorized under state law or the law of the jurisdiction where the deposition is taken to administer oaths.
(4) An authenticated deposition, taken upon reasonable notice to the other parties, may be read in evidence, to the extent it is admissible under the rules of evidence, before any military court or any proceeding before a court of inquiry, if it appears to the court:
(a) the witness resides or is beyond the state in which the military court or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the location of the trial or hearing;
(b) the witness due to death, age, illness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the location of the trial or hearing;
(c) the present location of the witness is unknown; or
(d) the deposition was taken in the physical presence of the accused.

Amended by Chapter 15, 1989 General Session

39-6-43 Sworn testimony -- Read in evidence.
(1) The sworn testimony of a case which is contained in the authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may be read in evidence by any party before a military court if:
(a) otherwise admissible under the rules of evidence;
(b) the accused was a party before the court of inquiry;
(c) the same issue was involved or the accused consents to the introduction of the evidence; or
(d) the accused was physically present when the testimony was taken.
(2) The testimony may be read in evidence:
(a) before a court of inquiry or a military board; or
(b) by the defense only in cases extending to the dismissal of a commissioned officer.

Enacted by Chapter 210, 1988 General Session

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

39-6-45 Vote necessary for conviction or other questions -- Tie vote.

(1) A person may not be convicted of any offense except by a unanimous verdict of the members of the court present at the time the vote is taken.

(2)

(a) All other questions decided by the members of a military court are determined by a majority vote. However, a determination to reconsider a finding of guilty, to reconsider a sentence, or to decrease it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(b) A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Amended by Chapter 15, 1989 General Session

39-6-46 Findings -- Background check prior to sentencing.

(1) A court shall announce its findings and sentence to the parties as soon as determined.

(2) The court panel may defer sentencing pending an investigation of the background of the accused to determine a just and appropriate sentence.

Enacted by Chapter 210, 1988 General Session

39-6-47 Military court records.

(1)

(a) Each military court shall maintain a separate record of the proceedings in each case brought before it. The record shall be authenticated by the signature of the military judge.

(b) If the record cannot be authenticated by the military judge due to his death, disability, or absence, it shall be authenticated by the signature of the trial counsel. If the trial counsel is unable to authenticate due to his death, disability, or absence, a member of the court panel shall authenticate the record by his signature.

(c) In a court of only a military judge, the record shall be authenticated by the court reporter under the same conditions that a member of a court would authenticate under this section, if the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may be prescribed by regulations of the governor.

(2) A copy of the record of the proceedings of each court shall be given to the accused as soon as it is authenticated. The expense in preparing and transmitting the record shall be by regulations prescribed by the governor or the adjutant general.
Utah Code

Enacted by Chapter 210, 1988 General Session

39-6-48 Cruel and unusual punishments -- Use of irons.
(1) Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be imposed by any court or inflicted upon any person under this chapter.
(2) Single or double irons may not be used except when necessary for safe custody.

Enacted by Chapter 210, 1988 General Session

39-6-49 Limits of punishment.
Punishment directed by a military court for an offense may not exceed limits prescribed under Section 39-1-38.5 or lesser limits the governor may prescribe for the offense.

Amended by Chapter 15, 1989 General Session

39-6-50 Forfeiture of pay as sentence.
(1) When a lawful and approved sentence of a court includes a forfeiture of pay or allowances in addition to confinement that is not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority.
(2) A forfeiture may not extend to any pay or allowances acquired before that date.

Enacted by Chapter 210, 1988 General Session

39-6-51 Confinement as sentence -- Penal institutions.
(1) A sentence of confinement imposed by a military court, whether or not it includes discharge or dismissal and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the National Guard or in any jail, penitentiary, or prison under the control of the state or of any political subdivision of the state.
(2) If the words "hard labor" are not included in a sentence or punishment imposed by a court martial imposing confinement, the authority executing the sentence or punishment is not prohibited from requiring hard labor as a part of the sentence or punishment.
(3) The keepers, officers, sheriffs, and wardens of penal institutions of the state and its political subdivisions designated by the governor or his designee under Section 39-6-10 shall:
   (a) receive persons ordered into confinement before trial and persons committed to confinement by a military court;
   (b) confine them according to law; and
   (c) receive or confine a person under this chapter without assessing any fee or charge.

Amended by Chapter 9, 1988 Special Session 2
Amended by Chapter 9, 1988 Special Session 2

39-6-52 Finding or sentence -- Error -- Review.
(1) A finding or sentence of a military court may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.
(2) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm that portion of the finding that includes a lesser included offense.

Enacted by Chapter 210, 1988 General Session

39-6-53 Trial record forwarded to convening authority.
After a trial by a military court, the record shall be forwarded to the convening authority, as reviewing authority. Action on the record may be taken by the person who convened the court, a commissioned officer commanding at that time, a successor in command, or by the governor.

Enacted by Chapter 210, 1988 General Session

39-6-54 Convening authority refers record to SJA -- Opinion.
The convening authority shall refer the record of each military court to the SJA, who shall submit a written opinion to the convening authority. If the final action of the court is an acquittal of all charges and specifications, the opinion is limited to questions of jurisdiction.

Amended by Chapter 287, 2008 General Session

39-6-55 Specification dismissal -- No finding of not guilty -- Procedure.
(1) If a specification before a military court has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.
(2) If there is an apparent error or omission in the record or the record shows improper or inconsistent action by a court martial regarding a finding or sentence, that may be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. However, the record may not be returned for:
   (a) reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;
   (b) reconsideration of a finding of not guilty of any charge unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of a provision of this chapter; or
   (c) increasing the severity of the sentence.

Amended by Chapter 15, 1989 General Session

39-6-56 Rehearing ordered by convening authority -- Grounds -- Procedure.
(1)
   (a) If the convening authority disapproves the findings and sentence of a military court he may, except if there is lack of sufficient evidence in the record to support the findings, order a rehearing, and shall state the reasons for disapproval.
   (b) If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2)
   (a) Each rehearing shall take place before a military court composed of members who are not members of the military court that first heard the case.
(b) At rehearing, the accused may not be tried for any offense of which he was found not guilty by the first military court. A sentence imposed may not exceed or be more severe than the original sentence, unless based on a finding of guilty regarding an offense not considered on the merits in the original proceedings.

Amended by Chapter 15, 1989 General Session

39-6-57 Convening authority -- Approval of findings and sentence.

The convening authority acting on the findings and sentence of a military court may approve only findings of guilty and the sentence or part of the sentence he finds correct under the law and fact, in his discretion.

Enacted by Chapter 210, 1988 General Session

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

39-6-59 Military court sentence -- Execution by convening authority.
(1) Except under Sections 39-6-17 and 39-6-58, a military court sentence may be ordered executed by the convening authority when approved by him, unless suspended or deferred.

(2) The convening authority shall, in his discretion, approve the sentence or the part or commuted form of the sentence. After his approval, he may suspend the execution of the sentence.

Enacted by Chapter 210, 1988 General Session

39-6-61 Probation violation -- Hearing -- Counsel -- Execution of suspended sentence.

(1)
(a) Before the vacation of the suspension of a military court sentence, the officer holding convening authority jurisdiction over the probationer shall hold a hearing on the alleged violation of probation.

(b) The probationer shall be represented by counsel at the hearing.

(2)
(a) The record of the hearing and the recommendation of the officer having jurisdiction shall be sent for action to the governor in cases involving a military court sentence of confinement, and to the commanding officer of the unit of the National Guard of which the probationer is a member, in all other cases.

(b) If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court that imposed the sentence.

Amended by Chapter 12, 1994 General Session

39-6-62 Petition for new trial -- Grounds.

Within 30 days after approval by the convening authority of a military court sentence, the accused may petition the convening authority for a new trial on the ground of newly discovered evidence or fraud on the court.

Amended by Chapter 15, 1989 General Session

39-6-63 Sentence -- Remission or suspension.

(1) A convening authority may remit or suspend any part or amount of the unexecuted portion of the sentence, including all uncollected forfeitures.

(2) The governor may for good cause shown substitute an administrative form of a discharge for a bad conduct discharge or dismissal executed under a military court sentence.

Enacted by Chapter 210, 1988 General Session

39-6-64 Sentence set aside -- Rights restored.

(1) Under rules prescribed by the governor or the adjutant general all rights, privileges, and property affected by an executed portion of a military court sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon the new trial or rehearing.
(2) If a previously executed sentence of bad conduct discharge is not imposed in a new trial, the governor shall substitute a discharge authorized for administrative issue, unless the accused is serving the remainder of his enlistment.

(3)
(a) If a previously executed sentence of dismissal is not imposed in a new trial, the governor shall substitute a discharge authorized for administrative issue.
(b) The commissioned officer dismissed by the sentence may be reappointed by the governor to the grade and rank he had attained, if a position is available under applicable organization.
(c) Time between the dismissal and reappointment is considered service for all purposes.

Amended by Chapter 9, 1988 Special Session 2
Amended by Chapter 9, 1988 Special Session 2

39-6-65 Finality of military court judgments.
(1) The proceedings, findings, and sentence a military court has reviewed and approved under this chapter, and all dismissals and discharges executed under sentences by military court following review and approval under this chapter, are final and conclusive.
(2) Orders publishing the proceedings of military court and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for new trial under Section 39-6-62.

Amended by Chapter 9, 1988 Special Session 2
Amended by Chapter 9, 1988 Special Session 2

39-6-107 Courts of inquiry.
(1) Courts of inquiry to investigate any matter may be convened by the governor or his designee, whether or not the persons involved have requested the inquiry.
(2) A court of inquiry consists of three or more commissioned officers. For each court, the convening authority shall also appoint counsel for the court.
(3)
(a) A person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. A person subject to this chapter or employed by the National Guard, who has a direct interest in the subject of inquiry, has the right to be designated as a party upon request to the court.
(b) A person designated as a party shall be given due notice and has the right to be present, represented by counsel, to have counsel appointed, to cross examine witnesses, and to introduce evidence.
(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.
(5) The members, counsel, the reporter, and interpreters of a court of inquiry shall take an oath or affirmation to faithfully perform their duties.
(6) Witnesses may be summoned to appear and testify and be examined before a court of inquiry, under the same provisions as for a military court.
(7) A court of inquiry shall make findings of fact but may not express opinions or make recommendations, unless required to do so by the convening authority.
(a) A court of inquiry shall keep a record of its proceedings, which shall be authenticated by
the signatures of the president and counsel for the court and forwarded to the convening
authority.
(b) If the record cannot be authenticated by the president, it shall be signed by a member in lieu
of the president. If the record cannot be authenticated by the counsel for the court, it shall be
authenticated by a member in lieu of the counsel.

Amended by Chapter 110, 1993 General Session

39-6-108 Execution of military court processes and sentences.
The processes and sentences of the National Guard in its military court, when the guard is not
in federal service, shall be executed by the civil officers prescribed by state law.

Enacted by Chapter 210, 1988 General Session

39-6-109 Military court -- Authority -- Processes and mandates.
(1) A military court may issue all processes and mandates necessary to carry into effect the
court's authority. The court may issue subpoenas duces tecum and enforce by attachment the
attendance of witnesses and production of books and records, when they are in the state, and
the courts are sitting in the state.
(2) The processes and mandates:
(a) may be issued by a military court judge or the president of other military courts;
(b) may be directed to and executed by the military police assigned to the court, or any peace
officer; and
(c) shall be in a form prescribed by regulations issued under this chapter.
(3) (a) All officers to whom the processes or mandates are directed shall execute them and make
return of their acts according to the requirements of the documents.
(b) Except where otherwise provided under this chapter, an officer may not demand or require
payment of any fee or charge for receiving, executing, or returning a process or mandate, or
for any service in connection with either document.

Enacted by Chapter 210, 1988 General Session

39-6-110 Fines.
(1) Fines may be paid to a military court or to an officer executing its process. The amount of the
fine may be noted upon any state roll or account for pay of the delinquent and deducted from
any pay or allowance due or to become due to him, until the fine is completely paid.
(2) Any sum deducted shall be turned in to the military court which imposed the fine and shall be
paid by the officer receiving it under the same procedure as for fines and other money collected
under a sentence of a military court.
(3) A fine or penalty imposed by a military court upon an officer or enlisted person shall be paid by
the officer collecting it to the state General Fund, within 30 days.

Enacted by Chapter 210, 1988 General Session

39-6-111 Action by military court -- Protection from prosecution.
An action or proceeding may not be prosecuted against the convening authority or a member of a military court, or an officer or person acting under its authority or reviewing its proceedings, because of the approval, imposition, or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court.

Enacted by Chapter 210, 1988 General Session

39-6-112 Presumption of military court jurisdiction.
The jurisdiction of military courts established under this chapter shall be presumed. The burden of proof rests on any person claiming the court does not have jurisdiction in any action or proceeding.

Enacted by Chapter 210, 1988 General Session

39-6-113 Jurisdiction over offenses.
(1) A member may not be tried or punished by court-martial or non-judicial punishment respectively for any offense unless the offense was committed while the member was in a military duty status under Title 32, United States Code, or while on state active duty orders.
(2) Nothing in this section shall limit a commander's authority to use adverse administrative action to address misconduct by a member, regardless of the member's status at the time of the misconduct.

Amended by Chapter 131, 2018 General Session

39-6-114 Chapter interpretation -- Federal law governs.
(1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the National Guard not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to Section 39-1-3, apply to and govern the National Guard of this state, including all members on active duty within the state as active duty guard/reserve personnel under U.S.C.A. Title 32, National Guard.
(2) The Uniform Code of Military Justice, 10 U.S.C.A. 47, including regulations, manuals, forms, precedents, and usages implementing, interpreting and complementing the code, is adopted for use by the National Guard of this state and applies as long as it is not inconsistent with:
   (a) the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state; or
   (b) a rule or regulation adopted pursuant to Section 39-1-3, to govern the National Guard of this state, including all members on active duty within the state as active duty guard/reserve personnel under U.S.C.A. Title 32, National Guard, when the members are serving other than in a federal capacity under U.S.C.A. Title 10.

Repealed and Re-enacted by Chapter 131, 2018 General Session