

Effective 5/4/2022

Title 39A. National Guard and Militia Act

**Chapter 1
Administration**

**Part 1
General Provisions**

39A-1-101 National Guard and Militia Act.

This title governs the Utah National Guard and unorganized militia in accordance with Utah Constitution Article XV.

Enacted by Chapter 373, 2022 General Session

39A-1-102 Definitions.

As used in this title:

- (1) "Adjutant general" means the commanding general of the Utah National Guard as appointed by the governor under Section 39A-1-201.
- (2) "National Guard" means the Utah National Guard created in Section 39A-3-101 and in accordance with Utah Constitution Article XV.
- (3) "Utah State Defense Force" or "Defense Force" means the unorganized militia as structured in Chapter 4 of this title.

Enacted by Chapter 373, 2022 General Session

**Part 2
Adjutant General**

39A-1-201 Adjutant general -- Appointment -- Term -- Qualifications.

- (1) There shall be one adjutant general of the Utah National Guard appointed by the governor.
- (2) The adjutant general is the commanding general of the Utah National Guard and the Utah State Defense Force and serves at the pleasure of the governor.
- (3) The individual appointed to the office shall:
 - (a) be a citizen of Utah and meet the requirements provided in Title 32, United States Code;
 - (b) be a federally recognized commissioned officer, with the rank of colonel or higher, of the Army National Guard or the Air National Guard with no fewer than five years commissioned service in the Utah National Guard; and
 - (c) as determined by the governor, have sufficient knowledge and experience to command the Utah National Guard.
- (4) Active service in the armed forces of the United States may be included in the requirement in Subsection (3)(b), if the officer was a member of the Utah National Guard when the officer entered that service.
- (5) The adjutant general shall establish a succession plan consistent with Section 53-2a-804 to ensure the continuity of command.

- (6) An officer is no longer eligible to hold the office of adjutant general after attaining the age of 64 years.
- (7) The adjutant general shall ensure the readiness, training, discipline, and operations of the Utah National Guard.

39A-1-202 Seal of adjutant general.

The seal of the adjutant general shall be circular in form, containing an inner circle. Within the inner circle shall be a shield with "Utah" impressed on the shield, and between the circles shall be impressed "National Guard, Adjutant General."

Renumbered and Amended by Chapter 373, 2022 General Session

39A-1-203 Director of joint staff -- Assistant adjutants general -- Chief of staff for the Air Force.

- (1) There is authorized an assistant adjutant general for the Army, an assistant adjutant general for the Air Force, a chief of staff for the Air Force, a land component commander, and a director of joint staff.
- (2) The adjutant general, with the approval of the governor, may appoint assistant adjutant generals, a chief of staff for the Air Force, a land component commander, and a director of joint staff with pay from the state.
- (3) The assistant adjutants general, the chief of staff for the Air Force, the land component commander, and the director of joint staff shall be at least a federally recognized field grade commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officers shall hold office at the pleasure of the adjutant general.
- (4) The adjutant general may detail an officer without the required commissioned service in the Utah National Guard to a position in this section only with the written approval of the governor.

Chapter 2

State Armory Board

39A-2-101 State Armory Board -- Creation -- Members -- A body corporate -- Powers -- Expenses.

- (1) There is created a three member State Armory Board with the following members:
 - (a) the governor;
 - (b) the executive director of the Department of Government Operations; and
 - (c) the adjutant general of the Utah National Guard, appointed in accordance with Section 39A-3-102.
- (2) The board is a body corporate with perpetual succession and the board's property is exempt from all taxes and assessments.
- (3) The board may:
 - (a) have and use a common seal;

- (b) sue and be sued;
 - (c) contract and be contracted with;
 - (d) take and hold by purchase, gift, devise, grant, or bequest real and personal property required for the board's use; and
 - (e) convert property received by gift, devise, or bequest, and not suitable for the board's uses, into other property as available, or into money.
- (4) The board may:
- (a) borrow money for the purpose of providing facilities, ranges, and training lands upon the sole credit of the real property to which the board has legal title; and
 - (b) secure loans described in Subsection (4)(a) by mortgage upon property to which the State Armory Board has legal title.
- (5)
- (a) Property mortgaged for a loan as provided in Subsection (4)(b) shall be the sole security for the loan.
 - (b) A deficiency judgment may not be made, rendered, or entered against the board upon the foreclosure of a mortgage under Subsection (4)(b).
 - (c) The board may not mortgage property in one city for the purpose of obtaining money for the erection of armories in any other place.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 373, 2022 General Session
Amended by Chapter 421, 2022 General Session

Effective until 7/1/2024

39A-2-102 Responsibilities of State Armory Board.

- (1) The board shall supervise and control all facilities, ranges, training lands, and all real property held or acquired for the military purposes of the state.
- (2) The board may:
 - (a) provide suitable facilities, ranges, and training lands for the different organizations of the National Guard;
 - (b) lease real property throughout the state wherever necessary for the use of organizations of the National Guard and for the storage of state and government property at a rental that the board considers reasonable;
 - (c) erect facilities and ranges at places within the state that it considers necessary upon lands to which it has acquired the legal title;
 - (d) expend military funds to acquire legal title to lands and to construct facilities and ranges;
 - (e) sell and lease property that the board holds under Subsection (1) for purposes consistent with the mission of the Utah National Guard; and
 - (f) conduct meetings and take official action in person or as necessary via electronic means, including telephone or video teleconferencing, or a combination of these methods.
- (3)
 - (a) Subject to Subsection (3)(b), the board may take options for the purchase of any premises under lease to the state for National Guard purposes:
 - (i) at any time during the life of the lease; and

- (ii) when the purchase is in the state's interest.
- (b) An option is not binding upon the board until it is approved by the Legislature.
- (4)
 - (a) Before legally binding the state to sell or lease any real property owned by the National Guard, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.
 - (b) Before legally binding the state to purchase any interest in real property, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.
 - (c) The Legislative Management Committee shall review each proposal and may approve or disapprove the sale.
- (5) The proceeds from the sales and leases of real property authorized by this section shall be appropriated to the State Armory Board to be applied toward the acquisition and sale of real property, and the construction of new armories.
- (6) Funds may be deposited into a public treasury investment fund to earn interest until use.

Renumbered and Amended by Chapter 373, 2022 General Session

Effective 7/1/2024

39A-2-102 Responsibilities of State Armory Board.

- (1) The board shall supervise and control all facilities, ranges, training lands, and all real property held or acquired for the military purposes of the state.
- (2) The board may:
 - (a) provide suitable facilities, ranges, and training lands for the different organizations of the National Guard;
 - (b) lease real property throughout the state wherever necessary for the use of organizations of the National Guard and for the storage of state and government property at a rental that the board considers reasonable;
 - (c) erect facilities and ranges at places within the state that it considers necessary upon lands to which it has acquired the legal title;
 - (d) expend military funds to acquire legal title to lands and to construct facilities and ranges;
 - (e) sell and lease property that the board holds under Subsection (1) for purposes consistent with the mission of the Utah National Guard; and
 - (f) conduct meetings and take official action in person or as necessary via electronic means, including telephone or video teleconferencing, or a combination of these methods.
- (3)
 - (a) Subject to Subsection (3)(b), the board may take options for the purchase of any premises under lease to the state for National Guard purposes:
 - (i) at any time during the life of the lease; and
 - (ii) when the purchase is in the state's interest.
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 - (a) Before legally binding the state to sell or lease any real property owned by the National Guard, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.
 - (b) Before legally binding the state to purchase any interest in real property, the board shall submit a description of the proposed sale to the Legislative Management Committee for its review and recommendations.

- (c) The Legislative Management Committee shall review each proposal and may approve or disapprove the sale.
- (5)
- (a) There is created an expendable special revenue fund known as the "State Armory Fund."
 - (b) The State Armory Fund shall consist of:
 - (i) proceeds from the sales and leases of real property authorized by this section;
 - (ii) appropriations by the Legislature; and
 - (iii) interest earned on the fund.
 - (c) Subject to the Legislative Management Committee's review and recommendation, the State Armory Board may expend money in the State Armory Fund to pay for the acquisition and sale of real property and the construction of new armories.

Amended by Chapter 268, 2024 General Session

39A-2-103 Political subdivisions and state agencies may assist in erecting facilities.

Any political subdivision or state agency may appropriate from any funds available for general purposes funds to assist the State Armory Board in the acquisition, construction, and maintenance of Utah National Guard facilities and infrastructure.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-2-104 Use of armories by veterans organizations permitted.

Federally chartered veterans organizations have the right to the use of armories owned or leased by the state at no charge, provided that the use does not interfere with the mission of the Utah National Guard as determined by the adjutant general.

Enacted by Chapter 373, 2022 General Session

Chapter 3 Utah National Guard

Part 1 National Guard

39A-3-101 Utah National Guard -- Creation.

- (1) There is created the Department of the Utah National Guard.
- (2) The Utah National Guard is commanded by an adjutant general and consists of the following:
 - (a) the joint force headquarters;
 - (b) the Utah Army National Guard, commanded by an assistant adjutant general for the Army;
 - (c) the Utah Air National Guard, commanded by an assistant adjutant general for the Air Force;
 - and
 - (d) the Utah State Defense Force as organized in Title 39A, Chapter 4, Utah State Defense Force.
- (3) The numerical strength, composition, distribution, organization, arms, uniforms, equipment, training, and discipline of the National Guard shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state.

- (4) The location of units including headquarters, when not otherwise prescribed by federal law, shall be fixed by the governor on the recommendation of the adjutant general.

Enacted by Chapter 373, 2022 General Session

39A-3-102 Governor commander in chief -- Powers and duties.

- (1) The governor by virtue of the governor's office shall be commander in chief of the Utah National Guard.
- (2) The governor:
 - (a) is authorized to issue all orders, rules and regulations necessary to conform the Utah National Guard to Title 32 of the United States Code in its organization, government, discipline, maintenance, training, equipment, and regulations;
 - (b) shall appoint and commission all officers and select all warrant officers, subject to the provisions of Title 32 of the United State Code;
 - (c) shall provide facilities, ranges, and training lands as required for the Utah National Guard; and
 - (d) may order the National Guard into active service as necessary.
- (3) Notwithstanding Subsection (2)(b), an appointee who fails to receive federal recognition after being notified by the National Guard of the appointment shall revert to the status occupied before the appointment.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-3-103 National Guard subject to call by United States.

- (1) The National Guard is at all times subject to the call of the President of the United States.
- (2) When called into the service of the United States, the National Guard is governed by the applicable laws and military regulations of the United States.
- (3) The National Guard and its members shall attend military training as required.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-3-104 Service members -- Appointment and promotion.

- (1) All officers of the National Guard shall be appointed by the governor and receive a state commission.
- (2) The power of appointment may be delegated to the adjutant general, and further delegated as the adjutant general considers necessary.
- (3) Appointments are subject to approval as prescribed by the laws of the United States or related rules or regulations governing the National Guard.
- (4) The appointment, promotion, and withdrawal of a federal commission shall be made in a manner consistent with all applicable federal policies, rules, instructions, or regulations.
- (5) The withdrawal of a state commission shall be made in accordance with National Guard regulations in effect at the time of consideration for the withdrawal.
- (6) The appointment, promotion, and reduction of enlisted personnel shall be made in a manner consistent with all applicable federal policies, rules, instructions, or regulations.

Enacted by Chapter 373, 2022 General Session

39A-3-105 General officer salary and benefits.

- (1) Full-time, state employed general officers or officers appointed to a general officer position shall receive a salary that makes the total federal and state compensation at least commensurate with the pay and allowances for their military grade or assigned position, time in grade, and time in service as established in the United States Department of Defense Finance and Accounting Services annual pay and allowances chart.
- (2) General officers or other officers appointed to a general officer position and appointed to state employment shall receive the benefits and protections in Section 71A-8-105 for the term of the appointment.

39A-3-106 State active duty orders.

- (1) Orders for state duty may be oral or written.
- (2) Written orders shall be issued by the governor or the adjutant general.
- (3) An oral order may be delivered by an officer or noncommissioned officer.

Enacted by Chapter 373, 2022 General Session

39A-3-107 Pay and benefits of National Guard members on state active duty.

- (1) When called into the service of the state and not in the service of the United States, the members of the National Guard shall:
 - (a) receive at least the same pay and allowance as members of the regular Army or regular Air Force of like pay grade and time in service; and
 - (b) elect to:
 - (i) receive medical, dental, disability, or death benefits equal to those received by full-time, permanent state employees; or
 - (ii) maintain any medical, dental, disability, or death benefits already in place.
- (2) The state may not make payments to members of the National Guard for service for which the United States government makes payment.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-3-108 Military property exempt from civil process.

Military property issued to or owned by members of the National Guard is exempt from all civil process.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-3-109 Loss of property -- Liability.

- (1) When Utah National Guard federal property is destroyed, damaged, or lost due to the failure of a service member to perform the duties required by law or regulation, the adjutant general may assess financial liability to the service member.
- (2) Within established law and regulation, the adjutant general may require the service member to reimburse the federal government for all or part of the loss, whether the service member is in federal status, state status, or off duty.

Enacted by Chapter 373, 2022 General Session

39A-3-110 Utah Code of Military Justice -- Procedures -- Jurisdiction.

- (1) Title 39A, Chapter 5, is adopted as the Utah Code of Military Justice.
- (2) The Utah Code of Military Justice sets forth offenses which, if committed by personnel of the Utah National Guard serving under this title or Title 32, United States Code, are punishable as a military court directs in accordance with Chapter 5, Part 2, Military Courts and Part 3, Military Punishments.
- (3) Judges of a military court may issue summons, executions, and other process. The process shall be served by county sheriffs, at the expense of the state.
- (4) Judgments for fines or forfeitures may be docketed in the same manner as district court judgments in each county, and without costs.
- (5) Appeals shall be taken to the Court of Appeals.
- (6) Sentences of a military court shall be served in a county jail. Costs incurred by the county shall be paid out of the General Fund of the state.
- (7) Certification as counsel for prosecution or defense, or as a judge of a military court, is under orders issued by the adjutant general, and is limited to attorneys who are members of the Utah State Bar and are serving as judge advocates in the Utah National Guard.
- (8) A service member may retain, at no cost to the state or National Guard, civilian counsel to represent the service member before a military court.
- (9) A military court may impose fines not exceeding \$2,500, restitution to victims, statutory surcharges, and may issue all writs and judgments for the execution of any processes.
- (10) When consistent with the Utah Manual for Military Courts, the Utah Rules of Criminal Procedure apply.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-3-111 Military court -- Concurrent prosecutorial jurisdiction with county or district attorney.

- (1) The county attorney or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with a military court to prosecute the accused individual at the expense of the county.
- (2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney or district attorney has reviewed and declined to prosecute the offense.

Renumbered and Amended by Chapter 373, 2022 General Session

Part 2
Service Member Benefits

39A-3-201 Tuition and fees assistance for Utah National Guard members -- Use and allocation -- Appropriation.

- (1)
 - (a) As used in this section, "fees" means general course fees, in addition to tuition, that are:
 - (i) imposed by an institution of higher education; and
 - (ii) required to be paid by a student to engage in a course of study at the institution of higher education.
 - (b) "Fees" includes:

- (i) a special course fee; and
 - (ii) expenses for required:
 - (A) text books; and
 - (B) course related materials.
- (2) The Utah National Guard may provide tuition and fees assistance to a member of the Utah National Guard for study at an institution of higher education, subject to the following requirements:
 - (a) the individual shall be, at the time the individual receives the assistance, an active member of the Utah National Guard; and
 - (b) the assistance is for tuition and fees only and may not be more than the resident tuition and fees for the actual course of postsecondary study engaged in by the individual.
- (3)
 - (a) Tuition and fees assistance shall be awarded as the adjutant general considers necessary.
 - (b) An individual may apply to the adjutant general of the state for assistance for each year during which the individual is an active member of the Utah National Guard.
 - (c) The adjutant general may recoup funds if a recipient fails to meet the requirements of the program.
- (4) The adjutant general of the state shall pay tuition and fees assistance directly to the institution of higher education from the funds appropriated.
- (5) The adjutant general of the state shall establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.
- (6) The adjutant general may use no more than 10% of the funds for administration of the program as the adjutant general considers necessary.

Amended by Chapter 28, 2024 General Session

39A-3-202 Pay and care of soldiers and airmen disabled while on state active duty.

- (1)
 - (a) Before a service member may be considered disabled in accordance with this section, the Adjutant General shall determine whether the service member's illness, injury, or disease was contracted or occurred through the fault or gross negligence of the service member. If the service member is determined to be at fault for an injury or developed a disability through his or her own grossly negligent actions, the service member is not entitled to any care, pension, or benefit in accordance with this section.
 - (b) Notwithstanding Subsection (1)(a) the service member may be eligible for benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
- (2) A member of the Utah National Guard or Utah State Defense Force who is disabled through illness, injury, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from duty is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act.
- (3)
 - (a) If the disability temporarily incapacitates the service member from pursuing the service member's usual business or occupation, the service member is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
 - (b) For the duration of the service member's inability to pursue a business or occupation, the adjutant general shall provide compensation so that the total compensation, including the

disability compensation received under Subsection (3)(a) is commensurate with the injured service member's lost pay. The adjutant general shall consider lost civilian and military pay in the compensation.

- (4) A service member who is permanently disabled, shall receive pensions and benefits from the state that individuals under like circumstances in the Armed Forces of the United States receive from the United States.
- (5) If a service member dies as a result of an injury, illness, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from active duty, the surviving spouse, minor children, or dependent parents of the service member shall receive compensation as directed in Section 39A-3-203.
- (6) Costs incurred by reason of this section shall be paid out of the funds available to the Utah National Guard.
- (7) The adjutant general, with the approval of the governor, shall make and publish regulations to implement this section.
- (8) Nothing in this section shall in any way limit or condition any other payment to a service member that the law allows.

39A-3-203 Compensation for injury or death.

Within 72 hours of the reported death of a member of the National Guard on state active duty, the state shall provide a death gratuity payment of \$100,000 to:

- (1) the individual designated as the recipient of the member's unpaid pay and allowances in the member's service record; or
- (2) if no one is designated, the designated individual cannot be found, or the designated individual has predeceased the member, the member's heirs in accordance with Title 75, Chapter 2, Part 1, Intestate Succession.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-3-204 National Guard Death Benefit Account.

- (1) There is created within the General Fund a restricted account known as "National Guard Death Benefit Account."
- (2)
 - (a) The restricted account shall be funded from funds appropriated by the Legislature.
 - (b) Funds in the restricted account may only be used to pay the death benefit authorized in Section 39A-3-203.
 - (c) The restricted account may accrue interest which shall be deposited into the restricted account.
 - (d) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall be transferred to the General Fund.

39A-3-205 Recruitment and retention bonus assistance for Utah National Guard members -- Use and allocation -- Appropriation.

- (1) The Utah National Guard may provide recruitment and retention bonus assistance to a member of the Utah National Guard for the purpose of recruitment and retention, if, at the time the individual receives the assistance, the individual is an active member in good standing with the Utah National Guard.

- (2) The adjutant general may award recruitment and retention bonus assistance as the adjutant general considers necessary to meet recruitment and retention needs.
- (3) The adjutant general of the state shall pay recruitment and retention bonus assistance directly to the individual.
- (4) The adjutant general may recoup recruitment and retention bonus assistance funds from a recipient if a recipient fails to meet the requirements of the program.
- (5) The adjutant general shall establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.
- (6) The adjutant general may use no more than 10% of the funds for administration of the program as the adjutant general considers necessary.

Chapter 4

Utah State Defense Force

39A-4-101 Utah State Defense Force -- How constituted.

- (1) Unless exempt under Subsection (3), in accordance with the Utah Constitution, Article XV, Section 1, all able-bodied male inhabitants of the state, between the ages of 18 and 45 years old, except such as are exempted by law, constitute the Utah State Defense Force.
- (2) Individuals 18 years old or older, who are residents of the state, may volunteer for consideration by the adjutant general to be members of the Utah State Defense Force.
- (3) Individuals exempt from Subsection (1) include:
 - (a) individuals exempted from military service by laws of the United States;
 - (b) individuals exempted from military service by the laws of this state;
 - (c) all individuals who have been honorably discharged from the armed forces, or volunteer forces of the United States;
 - (d) active members of any regularly organized fire or police department in any city or town, but a member of the active defense force may not be relieved from duty because the individual joined any volunteer fire company or department;
 - (e) judges and clerks of courts of record;
 - (f) state and county civil officers holding office by election;
 - (g) state officers appointed by the governor for a specified term of office;
 - (h) ministers of the gospel; and
 - (i) practicing physicians and hospital officers and assistants.
- (4) All individuals described in Subsection (1) are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after voluntarily enlisting in the National Guard of this state.

39A-4-102 Governor authorized to organize Utah State Defense Force.

- (1) The governor, by virtue of the governor's office, may organize and maintain the Utah State Defense Force.

- (2) The Defense Force may be composed of officers commissioned or assigned, and able-bodied citizens of the state who volunteer for service, supplemented if necessary by individuals enrolled by draft or otherwise as provided by law.
- (3) The Defense Force shall be additional to and distinct from the National Guard.
- (4) The Defense Force may have prescribed uniforms.
- (5) If ordered to active service by the governor, the Defense Force shall be under the command of the adjutant general.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-103 Qualifications of members.

An individual may not be commissioned or enlisted in the Defense Force who:

- (1) is not a citizen of the United States; or
- (2) has been expelled or dishonorably discharged from any military service.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-104 Term of force enlistment -- Oaths.

- (1) An individual may not be enlisted in the Defense Force for more than one year, but an enlistment may be renewed.
- (2) The oath to be taken upon enlistment in the Defense Force shall be substantially in the form prescribed for enlisted individuals of the National Guard, substituting the words, "Utah State Defense Force," where necessary.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-105 Oaths of force officers.

The oath to be taken by officers commissioned in the Defense Force shall be substantially in the form prescribed for officers of the National Guard, but substituting the words "Utah State Defense Force," where necessary.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-106 Compensation of force members.

- (1) Members of the Utah State Defense Force, when called into active service by the governor, shall receive compensation as prescribed by the governor.
- (2) The compensation may not exceed the rate of pay prescribed for officers and other members of the National Guard when called into active service of the state by the governor.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-107 No organizations to be enlisted as a unit.

A civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of individuals or civil group may not enlist in the Defense Force as an organization, detachment, company, or unit.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-108 Service outside state prohibited -- Exceptions.

- (1) The Defense Force may not be required to serve outside the boundaries of this state unless the governor, in response to a request from the governor of another state through the Emergency Management Assistance Compact, orders the Defense Force to assist outside the state.
- (2) The Defense Force may be recalled by the governor at any time.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-109 Military court law and rules of National Guard applicable.

When the Defense Force or any part of it is ordered to active service Chapter 5, Utah Code of Military Justice, as it applies to the National Guard, and regulations prescribed under it apply to the Utah State Defense Force.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-110 State Defense Force not subject to United States military service -- Members not exempt from United States military service.

- (1) This act may not be construed as authorizing the Defense Force to be called, ordered or in any manner drafted, as such into the military service of the United States.
- (2) An individual is not, by reason of enlistment or commission in the Defense Force, exempted from military service under any law of the United States.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-111 Governor may requisition arms and equipment from secretary of defense.

For the use of the Defense Force, the governor is authorized to requisition from the secretary of defense arms, ammunition, and equipment and to make the facilities and equipment of the National Guard available to the Defense Force.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-4-112 Governor may proclaim martial law.

- (1) Whenever the Defense Force or any portion of the Defense Force is called into active service, the governor may, by proclamation, declare all or any part of any county, city or town in which the troops are serving to be under martial law.
- (2) When the Defense Force is in active service, the commanding officer and his subordinates may cooperate with the civil authorities as directed by the adjutant general.

Renumbered and Amended by Chapter 373, 2022 General Session

Chapter 5
Utah Code of Military Justice

Part 1
General Provisions

39A-5-101 Utah Code of Military Justice.

The "Utah Code of Military Justice" may be abbreviated as the "UtCMJ" and applies to all individuals subject to this title.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-102 Definitions.

As used in this chapter:

- (1) "Accuser" means an individual who:
 - (a) signs and swears to charges;
 - (b) directs that charges nominally be signed and sworn to by another; or
 - (c) any other individual who has an interest other than an official interest in the prosecution of the accused.
- (2) "Apprehend" means taking an individual into custody by competent authority, with or without a warrant.
- (3) "Arrest" means restraining an individual by an order, not imposed as a punishment for an offense, directing the individual to remain within a specified area.
- (4) "Commanding officer" means both a commissioned officer and a warrant officer designated as a commander.
- (5) "Commissioned officer" includes a commissioned warrant officer.
- (6) "Confinement" means the physical restraint of an individual.
- (7) "Convening authority" means the governor or the adjutant general.
- (8) "Duty status other than state active duty" means any other type of duty, and includes going to and returning from the duty.
- (9) "Enlisted member" means an individual in an enlisted grade.
- (10) "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.
- (11) "Legal officer" means any commissioned officer of the National Guard designated to perform legal duties for a command.
- (12) "Major command" or "MACOM" means a major subdivision of the National Guard.
- (13) "Military" means any or all of the armed forces of the United States.
- (14) "Military court" means a court-martial, a court of inquiry, or a provost court.
- (15) "Military judge" means a qualified staff judge advocate officer of a military court detailed under Section 39A-5-206.
- (16) "National Guard" includes part-time and full-time active guard and reserve (AGR), and the Utah State Defense Force when called to active duty by the governor.
- (17) "Officer" means a commissioned or warrant officer.
- (18) "Rank" means the order of precedence among members of the armed forces.
- (19) "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 duty.
- (20) "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.
- (21) "State staff judge advocate" or "SSJA" means the commissioned judge advocate general's corps officer appointed as the senior legal officer for the National Guard.
- (22) "Superior commissioned officer" means a commissioned officer superior to another in rank or command.
- (23) "Unit" means any regularly organized command of the National Guard.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-103 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.
- (3) The adjutant general may appoint assistant state judge advocates as considered necessary. All assistant state judge advocates 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 SJA 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) An individual 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-104 Individuals subject to chapter -- Jurisdiction over offenses.

- (1) The following individuals are subject to this chapter:
 - (a) all members of the National Guard, including full-time members serving under Title 32, United States Code; and
 - (b) all other individuals lawfully ordered to duty in or with the National Guard or the Utah State Defense Force, from the date required by the terms of the order or other directive.
- (2)
 - (a) If there is a military activation by the federal government, all activated individuals who would otherwise be under the jurisdiction of this chapter are subject to concurrent jurisdiction under federal and state law.
 - (b) Individuals under this subsection may only be tried for offenses occurring during activation and after release from federal service, while within the period of the applicable statute of limitations.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-105 Application of chapter in and outside of the state -- Military courts held outside the state.

- (1) This chapter applies to all individuals:
 - (a) subject to this chapter within the state;
 - (b) otherwise subject to this chapter while serving outside the state; and
 - (c) while going to and returning from the service outside 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 individuals 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.
- (3) Nothing in this chapter limits 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-106 Offenses against the state by individual not subject to chapter.

An individual not subject to this chapter is guilty of an offense against the state if the individual willfully neglects or refuses to appear, refuses to qualify as a witness or to testify, or refuses to produce any evidence which the individual may have been legally subpoenaed to produce, after the individual 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-107 Apprehension.

- (1) An individual authorized under this chapter or rules promulgated pursuant to this chapter to apprehend individuals subject to this chapter, any provost marshal of a military court appointed under this chapter, and any peace officer authorized by law, may apprehend individuals subject to this chapter upon probable cause to believe that an offense has been committed and the individual to be apprehended committed the offense.
- (2) Commissioned officers, warrant officers, and noncommissioned officers may quell disorderly conduct among individuals subject to this chapter and may apprehend those individuals who are taking part.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-108 Arrest.

- (1) An enlisted service member may be ordered into arrest or confinement by any commanding officer by an order, oral or written, delivered in person or through individuals subject to this chapter, or through an individual authorized by this chapter to apprehend individuals.
- (2) A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his or her command or subject to his or her 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 the commissioned officer or warrant officer is subject, and only by an order, oral or written, delivered in person or by another commissioned officer. The authority to order the officer apprehended or into arrest or confinement may not be delegated.

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

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-109 Fraudulently obtained discharge -- Desertion -- Limitations -- Tolling of time limits.

- (1) An individual discharged from the 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 individual is subject to this chapter while in military custody for trial. Upon conviction of the charge the individual is subject to trial for all offenses under this chapter committed prior to the fraudulent discharge.
- (3) An individual who has deserted from a military unit, which would subject the individual 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.
- (4) An individual charged with desertion or absence without leave shall be tried and punished within four years after the preferral of charges.
- (5) Except under Subsection (4), an individual charged with any offense may not be tried by a military court or punished under Section 39A-5-303 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.
- (6) Periods when the accused was outside the state's jurisdiction or in the custody of civilian authorities are excluded in computing limitations of time under this section.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-110 Confinement.

- (1)
 - (a) An individual 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 an individual subject to this chapter is placed into arrest or confinement prior to trial, action shall be taken immediately to notify the individual of the specific offense charged, and to either try the individual, or dismiss the charges and release the individual.
- (2) Confinement before, during, or after trial by a military court shall be ordered by a field grade or general officer and may be in a penal institution determined by the governor or the adjutant general.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-111 Parties under obligation to keep a prisoner -- Reporting.

- (1) A provost marshal, sheriff, or officer of a city or county jail or penal institution designated under Section 39A-5-110, may not refuse to receive or keep any prisoner if the committing officer provides a signed statement indicating the offense charged against the prisoner.
- (2) Any party under Subsection (1) charged with keeping a prisoner shall within 24 hours after commitment 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 individual who ordered or authorized the commitment.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-112 Individual confined prior to trial -- Punishment limitations.

- (1) Subject to Section 39A-5-110, an individual in confinement prior to trial may not be subjected to punishment or penalty other than arrest or confinement while the charges are pending.
- (2) The arrest or confinement imposed on a prisoner may not be more rigorous than necessary to ensure the prisoner's presence. However, the prisoner 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 the prisoner's living conditions, immediately adjacent areas, or as otherwise designated by regulations governing the housing of a prisoner.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-113 Individual accused of offense against civilian -- Sentences of military and civilian courts.

- (1) A service member on duty and subject to this chapter who is accused of an offense against a civilian individual may be delivered, upon request, to a civilian authority for judicial proceedings.
- (2)
 - (a) If an individual under sentence imposed by a military court is delivered to a civilian authority under this section, and the individual is convicted in a civilian court, the execution of the sentence of the military court is interrupted.
 - (b) After the individual has completed the sentence imposed by the civilian court, upon request of military authority, the individual shall be returned to military custody for completion of the military court sentence.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-114 Charges and specifications -- Contents -- Notification of accused.

- (1) Charges and specifications shall be signed by a member subject to this chapter under oath before an individual authorized to administer oaths and shall state that:
 - (a) the individual 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 the individual's 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 or her as soon as practicable.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-115 Individual charged -- Limits on evidence obtained from other individuals.

- (1) An individual subject to this chapter may not:
 - (a) compel any individual to incriminate himself or herself or to answer any question, the answer to which may tend to incriminate the individual;

- (b) interrogate, or request any statement from an accused or an individual suspected of an offense, without first:
 - (i) informing the individual of the nature of the accusation; and
 - (ii) advising the individual that a statement is not required regarding the offense of which the individual is accused or suspected, and that any statement may be used as evidence against the individual in a trial by military court; and
 - (c) compel any individual 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 the individual.
- (2) A statement obtained from any individual in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may not be received in evidence against the individual in a trial by a military court.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-116 Charges to be forwarded to governor or adjutant general.

When an individual 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-117 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 the charge 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-118 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) An individual may not, against his or her objection, be brought to trial or be required to participate in a session called by the military judge under Section 39A-5-216, in a military court case, within five days after the service of charges.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-119 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 39A-3-102, apply to and govern the National Guard of this state, including all members on active duty within the state as active duty guard or 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 39A-3-102, to govern the National Guard of this state, including all members on active duty within the state as active duty guard or 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.

Renumbered and Amended by Chapter 373, 2022 General Session

Part 2 Military Courts

39A-5-201 Military courts.

This part sets the requirements and procedures for the conduct of military courts of the Utah National Guard.

Enacted by Chapter 373, 2022 General Session

39A-5-202 Composition -- Convening authority -- Responsibilities.

- (1) Within the National Guard while not in federal service, there is created a military court to hear matters designated under the Utah Code of Military Justice.
- (2) The governor or the adjutant general of the state is the convening authority for any military court in the state and upon receipt of charges may:
 - (a) dismiss any charges;
 - (b) forward charges to a subordinate commander for disposition; or
 - (c) refer charges to a military court for trial.
- (3) A military court shall be convened in accordance with this part.
- (4) The court shall be composed of:
 - (a) a military judge and not fewer than three panel 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.
- (5) The convening authority of a military court or court of inquiry:
 - (a) shall detail or employ qualified court reporters to record the proceedings of and testimony taken by the court; and
 - (b) may detail or employ interpreters, as necessary.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-203 Jurisdiction -- Punishments.

- (1)
 - (a) A military court in this state has jurisdiction to try individuals 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 described in Section 39A-5-302 and 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 individuals 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 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.
- (4) The jurisdiction of the courts established by this chapter is presumed, and the burden of proof shall rest on any individual attacking the court's jurisdiction in any action or proceeding.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-204 Authority -- Processes and mandates.

- (1) A military court may issue all processes and mandates necessary to carry into effect the court's authority.
- (2) 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 processes or mandates are directed shall execute and return all actions in accordance with the requirements of the documents.
 - (b) Except as otherwise provided in 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-205 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-206 Military judge -- Qualifications -- Designation for detail.

- (1) The convening authority of a military court shall, subject to regulations promulgated by the governor, detail a military judge, as designated by the state judge advocate, 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 duty by the state judge advocate.
- (3) Unless the military court is 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) An individual is not eligible to act as a military judge in a case if the individual:
- (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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-207 Authority of military court judges -- Payment of witnesses.

- (1) Judges of military courts may:
- (a) issue a warrant for the arrest of an accused individual 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 and subpoenas duces tecum, and enforce by attachment the attendance of witnesses and the production of books and papers;
 - (c) sentence for a refusal to be sworn or to answer as provided in actions before civil courts; and
 - (d) issue process to compel witnesses to appear and testify, and compel the production of other evidence in any county within the state.
- (2) Witnesses shall be paid in the same manner as in district courts.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-208 Individuals 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 individual 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 individual, 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 39A-5-216, 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 eligible 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 eligible members could not be obtained. This statement shall be appended to the court record.
- (4)
- (a) An individual subject to this chapter may be tried by a military court, but no member of the court may be junior to the individual in rank or grade.
 - (b) When a military court is convened, the convening authority shall detail as members of the court individuals who 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 if the member:
 - (i) is the accuser in the case;
 - (ii) is a witness in the case;
 - (iii) has acted as investigating officer in the case; or
 - (iv) has acted as counsel in the case.
- (5) An action or proceeding may not be prosecuted or maintained against a convening authority, member of a military court, or individual acting under the court's authority or reviewing the court's proceedings because of:
- (a) the imposition, approval, or execution of any sentence;
 - (b) the imposition or collection of a fine or penalty; or
 - (c) the execution of any warrant, writ, execution, process, or mandate of a military court.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-209 Military court findings -- Prohibition of censuring or influencing court actions -- Military court member's performance.

- (1) The court or any panel member, military judge, or counsel of the court may not be censured, reprimanded, or admonished by a convening authority, commanding officer, or staff officer with respect to the findings or sentence adjudged by the court, or any other function carried out in the proceeding.
- (2) An individual 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 a military tribunal arriving at the findings or sentence in any case; or
 - (b) any convening, approving, or reviewing authority with respect to any 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, an individual 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-210 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 before a military court by civilian counsel if provided by him at no expense to the state, or by military counsel of his or her own selection if reasonably available.
 - (b) If the accused has retained civilian counsel, the defense counsel and any assistant defense counsel who were detailed shall act as the associate counsel to the civilian counsel 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-211 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.
- (2) The governor shall promulgate regulations that 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-212 Military court -- Oath or affirmation.

- (1) Before performing their respective duties, an oath or affirmation to perform all duties faithfully shall be administered to:
 - (a) military judges;
 - (b) interpreters;
 - (c) members of the court;
 - (d) the trial counsel;

- (e) the assistant trial counsel;
 - (f) the defense counsel;
 - (g) the assistant defense counsel; and
 - (h) court reporters.
- (2)
- (a) The governor shall prescribe by regulation:
 - (i) the oath or affirmation;
 - (ii) the time and place of taking the oath or affirmation;
 - (iii) the manner of recording the taking; and
 - (iv) whether the oath is to be 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 individual 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 individual having taken an oath under this section is detailed to that duty.
- (3) Each witness in a military court shall be examined under oath or affirmation.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-213 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 member 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 or her discretion may grant additional peremptory challenges where appropriate.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-214 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-215 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-216 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 panel members, the military judge may, subject to Section 39A-5-118, call the court into session. The session shall be:
 - (a) made a part of the record; and
 - (b) in the presence of the accused, the defense counsel, and the trial counsel.
- (2) The session may be conducted without the presence of the panel members.
- (3) 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 promulgated 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 promulgated under Section 39A-5-219 and which does not require the presence of the members of the court.
- (4) When the members of a military court deliberate or vote, only the members may be present.
- (5) 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-217 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 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 pleaded not guilty.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-218 Contempt -- Penalty.

- (1) A military court may punish for contempt any individual 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-219 Obtaining evidence and witnesses -- Procedure.

The trial and defense counsel, and the military court, have equal opportunity to obtain witnesses and other evidence under:

- (1) regulations promulgated by the governor or adjutant general;
- (2) the applicable rules of civil and criminal procedure; or
- (3) state or federal law.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-220 Depositions -- Procedure.

- (1) After charges have been signed under Section 39A-5-114, 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 the 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 to administer oaths under state law or the law of the jurisdiction where the deposition is to be taken.
- (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:
 - (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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-221 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 an individual whose oral testimony cannot be obtained, may be read in evidence by any party before a military court if:
 - (a) the sworn testimony is 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-222 Voting by military court members -- Procedure -- Presumption of innocence -- Reasonable doubt -- Burden of proof.

- (1)
- (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.
- (2) 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 is presumed innocent until 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 the accused shall be acquitted;
 - (c) if there is a reasonable doubt as to the degree of guilt, the finding shall 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.
- (3)
- (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.
- (4)
- (a) If the court is composed of a military judge only, the military judge 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, on request, find the facts specially.
 - (c) If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact are included.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-223 Vote necessary for conviction or other questions -- Tie votes.

- (1) The accused 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) All other questions decided by the members of a military court are determined by a majority vote. A determination to reconsider a finding of guilty, to reconsider a sentence, or to decrease

a sentence, 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.

- (3)
 - (a) A tie vote on a challenge disqualifies the member challenged.
 - (b) 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.
 - (c) A tie vote on any other question is a determination in favor of the accused.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-224 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-225 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-226 Military court records.

- (1)
 - (a) Each military court shall maintain a separate record of the proceedings in each case brought before it. Each record shall be authenticated by the signature of the military judge.
 - (b)
 - (i) If the record cannot be authenticated by the military judge due to death, disability, or absence, it shall be authenticated by the signature of the trial counsel.
 - (ii) If the trial counsel is unable to authenticate due to death, disability, or absence, a member of the court panel shall authenticate the record by 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:
 - (i) if the proceedings have resulted in an acquittal of all charges and specifications; or
 - (ii) if the proceedings are not affecting a general or flag officer, for a sentence that does not include a discharge and is 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.
- (3) The expense in preparing and transmitting the record shall be by regulations prescribed by the governor or the adjutant general.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-227 Trial record forwarded to convening authority.

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

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-228 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-229 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-230 Rehearing ordered by convening authority -- Grounds -- Procedure.

- (1)
 - (a) If the convening authority disapproves the findings and sentence of a military court, the convening authority may, unless there is a lack of sufficient evidence in the record to support the findings, order a rehearing, and state the reasons for disapproval.
 - (b) If the convening authority disapproves the findings and sentence and does not order a rehearing, the charges shall be dismissed.
- (2)
 - (a) Each rehearing shall take place before a military court composed of members who are not members of the military court that originally heard the case.
 - (b) At a rehearing, the accused may not be tried for any offense for which a verdict of not guilty was returned by the original military court.
- (3) 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-231 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 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 the convening authority's 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-232 Military court sentence -- Execution by convening authority.

- (1) Except under Sections 39A-5-306 and 39A-5-231, a military court sentence may be ordered executed by the convening authority when approved, unless suspended or deferred.
- (2) The convening authority has discretion to approve the sentence or a part or commuted form of the sentence.
- (3) After approval, the convening authority may suspend the execution of the sentence.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-233 Probation violation -- Hearing -- Counsel -- Execution of suspended sentence.

- (1) Probation imposed as a result of a suspended sentence may be vacated by the convening authority.
- (2)

- (a) Before a suspended military court sentence may be vacated, 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.
- (3)
 - (a) The record of the hearing and the recommendation of the officer having jurisdiction shall be sent for action to:
 - (i) the governor in cases involving a military court sentence of confinement; or
 - (ii) in all other cases, to the commanding officer of the National Guard unit of which the probationer is a member.
 - (b) If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.
- (4) The suspension of any other sentence may be vacated by any authority for the command in which the accused is serving or assigned that is competent to convene a court that imposed the sentence.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-234 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-235 Second trial on an offense prohibited.

- (1) An individual may not, without the individual's 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-236 Sentence -- Vacation or suspension.

- (1) A convening authority may vacate 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-237 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 or her 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) A commissioned officer dismissed by a sentence may be reappointed by the governor to the grade and rank the commissioned officer had attained, if a position is available under the applicable organization.
 - (c) Time between the dismissal and reappointment is considered service for all purposes.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-238 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 39A-5-234.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-239 Courts of inquiry.

- (1) Courts of inquiry to investigate any matter may be convened by the governor or his designee, whether or not the individuals 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) An individual subject to this chapter whose conduct is subject to inquiry shall be designated as a party. An individual 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) An individual 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, reporter, and interpreters of a court of inquiry shall take an oath or affirmation to faithfully perform the duties required under this section.
- (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.
- (8)

- (a) A court of inquiry shall keep a record of the court's proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority.
- (b)
 - (i) If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president.
 - (ii) If the record cannot be authenticated by the counsel for the court, it shall be authenticated by a member in lieu of the counsel.

Renumbered and Amended by Chapter 373, 2022 General Session

Part 3

Military Punishments

39A-5-301 Military punishments -- Limits of punishment -- Cruel and unusual punishments -- Use of irons.

- (1) Punishment directed by a military court for an offense may not exceed limits prescribed under Subsection (2) or lesser limits prescribed by the governor for the offense.
- (2) A military court may impose upon an accused any of the following after conviction for an offense:
 - (a) incarceration in a county jail for no longer than one year;
 - (b) a fine of not more than \$2,500;
 - (c) forfeiture of pay of not more than \$2,500;
 - (d) detention of pay equivalent to three months' pay for a period not to exceed one year;
 - (e) arrest in quarters for officers;
 - (f) restriction to specified limits for enlisted members;
 - (g) extra duty for not more than 60 consecutive days;
 - (h) reprimand;
 - (i) reduction of enlisted members to the lowest enlisted grade;
 - (j) a bad conduct discharge for enlisted members;
 - (k) dismissal for officers;
 - (l) restitution to any individual or entity injured as a result of the accused's conduct; or
 - (m) any combination of Subsections (2)(a) through (2)(l).
- (3) Cruel or unusual punishments, including flogging, branding, marking, or tattooing on the body may not be imposed by any court or inflicted upon any individual subject to this chapter.
- (4) Single or double irons may not be used unless necessary for safe custody.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-302 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 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.
 - (a) Forfeiture of pay shall be calculated based on the monthly amount a service member would receive as base pay if on active duty.
 - (b) 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 member 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 member 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 member 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, vacate 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.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-303 Fines.

- (1) Fines imposed by a military court may be paid to the military court or to an officer executing process for the court. 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 the individual fined, 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 member shall be paid by the officer collecting it to the state General Fund within 30 days.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-304 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 received before that date.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-305 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 penal institution 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 officers, sheriffs, and penal institutions of the state and any political subdivisions of the state designated by the governor or his designee under Section 39A-5-111 shall:
 - (a) receive individuals ordered into confinement before trial and individuals committed to confinement by a military court;
 - (b) confine them according to law; and
 - (c) receive or confine an individual under this chapter without assessing any fee or charge.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-5-306 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.

Renumbered and Amended by Chapter 373, 2022 General Session

Chapter 6

Utah Service Members' Civil Relief Act

39A-6-101 Utah Service Members' Civil Relief Act -- Definitions.

As used in this chapter:

- (1) "Dependent" means the spouse and children of a service member or any other individual dependent upon the service member for support.
- (2) "Interest" includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.
- (3) "Service member" means any member of the Utah National Guard or Utah State Defense Force serving on active military service in an organized military unit.
- (4) "State military service" means active, full-time service with a recognized military unit called into service by the governor for at least 30 days.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-102 Application of this chapter.

- (1) Military members of the National Guard or the Defense Force, when ordered to state military service by the governor have the same rights and protections as provided by federal law for activation to federal military service.
- (2) Proper application of this chapter shall suspend or postpone actions upon certain obligations until 60 days after discharge from active, full-time state military service.

Enacted by Chapter 373, 2022 General Session

39A-6-103 Rulemaking authority.

The adjutant general may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-104 Reopening default judgments.

- (1) A default judgment rendered in any civil action against a service member during a period of state military service or within 30 days after termination of the state military service may be set aside if:
 - (a) it appears that the service member was prejudiced by reason of the service member's state military service in making a defense to the action;
 - (b) application by the service member or the service member's legal representative is made to the court rendering the judgment not later than 60 days after the termination of the service member's state military service; and
 - (c) the application provides enough facts that it appears that the defendant has a meritorious or legal defense to the action or some part of the action.
- (2) Vacating, setting aside, or reversing any judgment because of any of the provisions of this chapter may not impair any right or title acquired by any bona fide purchaser for value under the judgment.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-105 Stay of proceedings.

- (1) If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member and in the conduct of the proceedings may be adversely affected by the service member's state military service, the court may, on its own motion, stay the proceedings.
- (2) The court may stay the proceedings if the service member or another individual on the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct a defense is not materially affected by reason of the service member's state military service.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-106 Fines and penalties on contracts.

- (1) If compliance with the terms of a contract is stayed pursuant to this chapter, a fine or penalty may not accrue by reason of failure to comply during the period of the stay.
- (2) If a service member has not obtained a stay and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in state military service when the penalty was incurred and the service member's ability to pay or perform was materially impaired.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-107 Exercise of rights not to affect future financial transactions.

Application by a service member in state military service for, or receipt of, a stay, postponement, or suspension under the provisions of this chapter in the payment of any fine, penalty, insurance premium, or other civil obligation or liability may not be used for any of the following:

- (1) a determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms;
- (2) with respect to a credit transaction between a creditor and a service member:
 - (a) a denial or revocation of credit by the creditor;
 - (b) a change by the creditor in the terms of an existing credit arrangement; or
 - (c) a refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested; or
- (3) an adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-108 Stay of execution of judgment.

Unless the court determines on the record that the ability of the service member to comply with the judgment or order entered or sought is not materially affected by reason of the service member's state military service, the court may, on its own motion, or upon application by the service member or another individual on the service member's behalf:

- (1) stay the execution of any judgment or order entered against the service member, as provided in this chapter; and

- (2) vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this chapter.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-109 Duration of stays.

- (1) Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this chapter may be ordered for the period of state military service plus 60 days after its termination or any part of that time period.
- (2) If the service member in state military service is a codefendant with others, the plaintiff may, with leave of the court, proceed against the others.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-110 Statutes of limitations affected by state military service.

The period of state military service is not included in computing any period limited by law, rule, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any individual in state military service or by or against the service member's heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding has accrued prior to or during the period of state military service.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-111 Maximum rate of interest.

An obligation or liability bearing interest at a rate in excess of six percent per year incurred by a service member in state military service before the service member's entry into state military service may not, during any part of the period of state military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court and upon application to the court by the obligee, the ability of the service member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the service member's service. The court may make any order in the action that, in the court's opinion, is just.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-112 Dependent benefits.

Dependents of a service member in state military service are entitled to the benefits accorded to service members in state military service under the provisions of Sections 39A-6-113 through 39A-6-117 upon application to a court, unless, in the opinion of the court, the ability of the dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the state military service of the service member upon whom the applicants are dependent.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-113 Eviction or distress of dependents.

- (1) A landlord may not evict or take and hold property of a service member or the service member's dependents for nonpayment of rent during the period of state military service if the

rent on the premises occupied by the service member or the service member's dependents is less than \$2,400 per month unless a court allows it after application to the court and an order granted in an action or proceeding affecting the right of possession.

- (2) In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three months, or make any order the court determines to be reasonable and just under the circumstances, unless the court finds that the ability of the tenant to pay the agreed rent is not materially affected by reason of the service member's state military service.
- (3) When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises similar to that granted service members in military service in Sections 39A-6-114 through 39A-6-116 to the extent and for any period as the court determines to be just and reasonable under the circumstances.
- (4) Any person who knowingly takes part in any eviction or distress otherwise than as provided in Subsection (1), or attempts to do so, is guilty of a class B misdemeanor.
- (5) The governor is empowered to order an allotment of the pay of a service member in state military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-114 Installment contracts.

- (1) The creditor of a service member who, prior to entry into state military service, has entered into an installment contract for the purchase of real or personal property may not terminate the contract or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.
- (2) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the contract is not materially affected by reason of the service member's state military service:
 - (a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;
 - (b) order a stay of the proceedings on the court's own motion, or on motion by the service member or another individual on the service member's behalf; or
 - (c) make any other disposition of the case the court considers to be equitable to conserve the interests of all parties.
- (3) Any person who knowingly repossesses property which is the subject of this section other than as provided in Subsection (1) is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-115 Mortgage foreclosures.

- (1) The creditor of a service member who entered into a mortgage contract with the service member or the service member's dependent for the purchase of real or personal property prior to the service member's entry into state military service may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during the service member's state military service without an order from a court of competent jurisdiction.
- (2) The court, upon an application under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of the service member's state military service:

- (a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;
 - (b) order a stay of the proceedings on the court's own motion, or on motion by the service member or another individual on the service member's behalf; or
 - (c) make any other disposition of the case as the court considers to be equitable to conserve the interests of all parties.
- (3) In order to come within the provisions of this section, the service member or dependent shall establish the following:
- (a) that relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;
 - (b) that the obligation originated prior to the service member's entry into state military service;
 - (c) that the property was owned by the service member or the service member's dependent prior to the commencement of state military service; and
 - (d) that the property is still owned by the service member or the service member's dependent at the time relief is sought.
- (4) Any person who knowingly forecloses on property which is the subject of this section other than as provided in Subsection (1) is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-116 Application for relief.

- (1) A service member may, at any time during the service member's period of state military service or within 60 days after discharge or termination, apply to a court for relief in respect of any obligation or liability incurred by the service member prior to the service member's period of military service.
- (2) The court, after appropriate notice and hearing, unless in the court's opinion the ability of the applicant to comply with the terms of the obligation or liability has not been materially affected by reason of the service member's state military service, may grant the following relief:
- (a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of state military service and, from the date of termination of the period of state military service or from the date of application if made after termination of state military service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of state military service of the applicant, or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of state military service or from the date of application, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as the court may consider just.
 - (b) In the case of any other obligation or liability, a stay of the enforcement during the applicant's period of state military service and, from the date of termination of the period of state military service or from the date of application if made after termination of the period of state military service, for a period of time equal to the period of state military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of state military service or the date of application, in equal periodic installments during the extended period at the rate of interest

prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.

- (3) When any court has granted a stay as provided in this section, a fine or penalty may not be accrued for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-6-117 Storage liens.

- (1) A person may not exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a service member in state military service during the service member's period of state military service and for 60 days after termination or discharge, except upon an order previously granted by a court upon application and a return to the court made and approved by the court. In the proceeding the court may, after hearing the matter, on its own motion, and shall, on application by the service member in state military service or another individual on the service member's behalf, unless in the opinion of the court the ability of the service member to pay the storage charges due is not materially affected by reason of the service member's state military service:
 - (a) stay the proceedings as provided in this chapter; or
 - (b) make any other disposition the court considers to be equitable to conserve the interest of all the parties.
- (2) The enactment of the provisions of this section may not be construed in any way as affecting or limiting the scope of Section 39A-6-115.
- (3) Any person who knowingly takes any action contrary to the provisions of this section, or attempts to do so, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 373, 2022 General Session

Chapter 7

Morale, Welfare, and Recreation Program

39A-7-101 State Morale, Welfare, and Recreation Program -- Program established.

The adjutant general is authorized to establish a Utah National Guard Morale, Welfare, and Recreation Program to serve members of the military, eligible dependents, and others as set out in Section 39A-7-103.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-7-102 Definitions.

For purposes of this chapter:

- (1) "Dependent" means the spouse or children of an individual eligible to use the program and facilities in accordance with Section 39A-7-103.
- (2) "MWR" means morale, welfare, and recreation.
- (3) "MWR facility" means any Utah National Guard facility located on a Department of Defense or Utah National Guard installation or on property controlled by the Department of Defense or the Utah National Guard, the purpose of which is to enhance MWR for authorized patrons.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-7-103 Eligibility and facilities.

- (1) Use of the MWR program and facilities is limited to:
 - (a) active and reserve component members of the Utah National Guard and armed forces of the United States;
 - (b) individuals retired from the armed forces of the United States;
 - (c) civilian employees of the Utah National Guard;
 - (d) dependents of authorized individuals in Subsections (1)(a) through (c);
 - (e) contracted employees of the Utah National Guard while working on-site or conducting business on National Guard property;
 - (f) sponsored individuals when personally accompanied by a sponsor who is an eligible patron as described in this section; and
 - (g) other personnel or organizations at the discretion of the adjutant general.
- (2) MWR facilities include any of the following, even if the shop, building, or parcel is only partially used for MWR purposes:
 - (a) post or base exchange;
 - (b) canteen or service club;
 - (c) barber shop;
 - (d) fitness center;
 - (e) snack bar;
 - (f) restaurant;
 - (g) billeting operation;
 - (h) laundry facility;
 - (i) range;
 - (j) swimming pool; or
 - (k) any other shop, building, or parcel that meets the definition of MWR facility in Section 39A-7-102.
- (3) The adjutant general shall, by regulation, determine specific use priorities when MWR facilities cannot accommodate all authorized patrons.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-7-104 Administration of MWR Program.

- (1) The adjutant general may authorize the program to:
 - (a) contract for goods and services;
 - (b) hire employees; and
 - (c) receive funds from patrons in exchange for goods or services provided within the program.
- (2) The adjutant general is authorized to establish MWR facilities throughout the state that, in the adjutant general's judgment, are necessary for military purposes.
- (3) The adjutant general shall promulgate regulations to govern the operation of the program.
- (4) The adjutant general may appoint a director for the program.
- (5) The adjutant general shall establish a system of bookkeeping, accounting, and auditing procedures for the proper handling of funds derived from the program's operations.
- (6) The program may use State Armory Board-controlled properties, provided:
 - (a) the use incurs no more than nominal cost to the state; or

- (b) any costs to the state above nominal associated with the use are reimbursed to the state by the program.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-7-105 National Guard MWR Fund -- Proceeds.

- (1) There is created an expendable special revenue fund known as the National Guard MWR Fund.
- (2) The fund shall consist of:
 - (a) all proceeds collected under this chapter;
 - (b) donations made to the National Guard MWR Program; and
 - (c) any appropriations to the program by the Legislature.
- (3) Money from the fund shall be used for the enhancement of morale, welfare, and recreation, and the administration of the program under this chapter, including paying the costs of:
 - (a) salaries of program employees;
 - (b) public liability insurance, when needed;
 - (c) the adjutant general's Outreach Program;
 - (d) the State Partnership Program; and
 - (e) any other expenses considered necessary in furtherance of the program by the adjutant general or the adjutant general's designee.

Renumbered and Amended by Chapter 373, 2022 General Session

Chapter 8

West Traverse Sentinel Landscape Act

39A-8-101 West Traverse Sentinel Landscape Act -- Purpose.

The purpose of this act is to:

- (1) identify lands adjacent to Camp Williams that are important to the nation's defense mission;
- (2) preserve and enhance the relationship between adjacent landowners and Camp Williams; and
- (3) create incentives to encourage adjacent landowners to adopt land management practices consistent with Camp Williams's military mission.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-8-102 Area designation -- West Traverse Sentinel Landscape.

- (1) The compatible use buffer area surrounding Camp Williams shall be known as the West Traverse Sentinel Landscape.
- (2) Lands designated by the committee established in Section 39A-8-103 and lands acquired or encumbered through the Camp Williams Army Compatible Use Buffer (ACUB) Program shall be added to the buffer area.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-8-103 West Traverse Sentinel Landscape Coordinating Committee.

- (1) There is created the West Traverse Sentinel Landscape Coordinating Committee.

- (2) The committee shall be composed of the following members:
 - (a) the adjutant general of the Utah National Guard or another senior officer appointed by the adjutant general;
 - (b) the executive director of the Department of Veterans and Military Affairs or the director's designee;
 - (c) a landowner, selected by the chair, who owns property within the sentinel landscape area;
 - (d) a representative from a land conservation organization in Utah recognized as accredited under the standards and practices of the Land Trust Accreditation Commission;
 - (e) a representative from each municipality adjacent to Camp Williams, at the discretion of the municipality;
 - (f) one representative each from Salt Lake, Utah, and Tooele counties, at the discretion of the county governing body;
 - (g) a representative from a nongovernmental land management organization; and
 - (h) one member selected from a state agency that participates in land management activities.
- (3) Committee members shall be selected and serve in accordance with this Subsection (3).
 - (a) The committee member representing Subsection (2)(c) shall be selected by the chair from a list of nominees presented by local officials.
 - (b) The committee members representing Subsections (2)(d) and (g) shall be invited to participate by the chair with the approval of a majority of the committee.
 - (c) Each incorporated municipality bordering Camp Williams shall, at its discretion no later than July 1 of each year, provide the chair with the name of the individual who will represent the municipality on the committee, as provided in Subsection (2)(e). If the municipality declines to be represented on the committee, it shall send a letter to the chair on the municipality's letterhead stating that no individual will be appointed.
 - (d) If a county, as provided in Subsection (2)(f), declines to be represented on the committee, it shall send a letter to the chair on the county's letterhead not later than July 1 of each year stating that no individual will be appointed.
 - (e) The committee chair shall request the appointment of members representing Subsection (2)(h) from:
 - (i) the governor if the request is for a member from a state agency; or
 - (ii) the mayor or governing body of a local government entity if the request is for a member from a local government agency.
- (4) The adjutant general or his appointee shall serve as chair of the committee.
- (5) The committee shall meet at the call of the chair, but not less than twice each calendar year.
- (6) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7) The Utah National Guard shall provide staff support for the committee.

Renumbered and Amended by Chapter 373, 2022 General Session

39A-8-104 Committee responsibilities.

- (1) The committee shall:
 - (a) identify lands to be included in the designated sentinel landscape;

- (b) develop strategies and recommendations to encourage landowners within the sentinel landscape to voluntarily participate in and begin or continue land uses compatible with Camp Williams's military mission; and
 - (c) publish any policies and procedures as administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) In designating sentinel lands, the coordinating committee shall include all working or natural lands that the coordinating committee believes contribute to the long-term sustainability of the military missions conducted at Camp Williams.
 - (3) The committee shall determine the appropriate level of state resources required to adequately protect Camp Williams's military mission and may apply for grants from the LeRay McAllister Working Farm and Ranch Fund to aid in securing those resources.
 - (4) In determining lands to designate, the coordinating committee shall seek input from:
 - (a) the director of the Department of Defense Readiness and Environmental Protection Integration Program; and
 - (b) the director of the National Guard Bureau Army Compatible Use Buffer Program, as authorized under 10 U.S.C. Sec. 2684(a).
 - (5) The committee shall provide a written report of its activities if state funds are expended during the previous calendar year no later than July 31 annually to:
 - (a) the governor;
 - (b) the Government Operations Interim Committee; and
 - (c) the Executive Appropriations Committee.

Amended by Chapter 180, 2023 General Session

Chapter 9

Gifts to the Utah National Guard

39A-9-101 Acceptance of gifts.

- (1) The Utah National Guard is authorized to receive gifts, contributions, and donations of all kinds, including tangible objects and real property made on the condition that the Utah National Guard uses the gifts, contributions, and donations for the benefit of, or in connection with, the Utah National Guard and Utah National Guard members, employees, or members' or employees' dependents.
- (2) The adjutant general is the acceptance authority for gifts described in Subsection (1).
- (3) The adjutant general may also accept gifts donated to benefit a state military museum or to create a memorial within the state honoring the activities of the Utah National Guard.
- (4) A gift, grant, or donation described in this section will not revert to the General Fund and shall be considered non-lapsing funds.
- (5) Acceptance authorities will ensure compliance with the restrictions and limitations contained in Section 63G-6a-2404.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for the acceptance of gifts, including establishing:
 - (a) delegation of gift acceptance authority;
 - (b) the method and criteria for accepting gifts;
 - (c) identification of existing accounts for gift proceeds to be deposited into;
 - (d) use and purpose of gifts;

- (e) prohibitions; and
- (f) exceptions to the policy.