

MILITARY JUSTICE CODE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill makes changes to the Utah Code of Military Justice.

Highlighted Provisions:

This bill:

- ▶ makes technical changes to titles used by military attorneys to conform with federal labels;
- ▶ eliminates the right to trial by jury for nonjudicial actions and provides instead for a de novo review on appeal; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

39-1-41, as last amended by Laws of Utah 1988, Chapter 210

39-6-2, as last amended by Laws of Utah 1989, Chapter 15

39-6-6, as last amended by Laws of Utah 1989, Chapter 15

39-6-13, as last amended by Laws of Utah 1989, Chapter 15

39-6-20, as last amended by Laws of Utah 1989, Chapter 15

39-6-27, as enacted by Laws of Utah 1988, Chapter 210

39-6-54, as enacted by Laws of Utah 1988, Chapter 210

30 **39-6-58**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **39-1-41** is amended to read:

34 **39-1-41. Discharge or dismissal.**

35 A sentence of dismissal from the service or discharge imposed by a military court may
36 not be executed until reviewed by the state [staff] judge advocate and [until] approved by the
37 governor.

38 Section 2. Section **39-6-2** is amended to read:

39 **39-6-2. Definitions.**

40 As used in this chapter:

41 (1) "Accuser" means a person who:

42 (a) signs and swears to charges;

43 (b) directs that charges nominally be signed and sworn to by another; or

44 (c) any other person who has an interest other than an official interest in the prosecution
45 of the accused.

46 (2) "Commanding officer" means both a commissioned officer and a warrant officer
47 designated as a commander.

48 (3) "Commissioned officer" includes a commissioned warrant officer.

49 (4) "Convening authority" means the governor or the adjutant general.

50 (5) "Duty status other than state active duty" means any other type of duty, and
51 includes going to and returning from the duty.

52 (6) "Enlisted member" means a person in an enlisted grade.

53 (7) "Grade" means a step or degree in a graduated scale of office or military rank,
54 established and designated as a grade by law or regulation.

55 (8) "Legal officer" means any commissioned officer of the organized National Guard of
56 the state designated to perform legal duties for a command.

57 (9) "Major command" or "MACOM" means a major subdivision of the Utah National

58 Guard.

59 [~~(10)~~] "May" is permissive, and in context grants or denies permission or authority.]

60 [~~(11)~~] (10) "Military" means any or all of the armed forces of the United States.

61 [~~(12)~~] (11) "Military court" means a court-martial, a court of inquiry, or a provost

62 court.

63 [~~(13)~~] (12) "Military judge" means a qualified staff judge advocate officer of a military

64 court detailed under Section 39-6-20.

65 [~~(14)~~] (13) "National Guard" means the Utah Army and Air National Guard, including

66 part-time and full-time active guard and reserve (AGR), and includes the Utah unorganized

67 militia when called to active duty by the governor of the state.

68 [~~(15)~~] (14) "Officer" means commissioned or warrant officer.

69 [~~(16)~~] (15) "Rank" means the order of precedence among members of the armed forces.

70 [~~(17)~~] "Shall" is imperative.]

71 [~~(18)~~] (16) "State active duty" means full-time duty in the active military service of the

72 state under an order of the governor, issued pursuant to [~~his~~] the governor's authority, and

73 includes going to and returning from the duty.

74 [~~(19)~~] (17) "State [~~staff~~] judge advocate" or [~~"SSJA"~~] "SJA" means the commissioned

75 officer responsible for supervising the administration of the military justice in the National

76 Guard, and qualified and designated as judge advocate general corps officer.

77 [~~(20)~~] (18) "Superior commissioned officer" means a commissioned officer superior to

78 another in rank or command.

79 [~~(21)~~] (19) "UCMJ" means Title 39, Chapter 6, Utah Code of Military Justice.

80 Section 3. Section **39-6-6** is amended to read:

81 **39-6-6. State staff judge advocate -- Appointment -- Qualifications -- Duties --**

82 **Assistants.**

83 (1) The adjutant general shall appoint an officer of the National Guard as the state

84 [~~staff~~] judge advocate [~~(SSJA)~~]. The officer shall be a member of the Utah State Bar [~~and the~~],

85 a United States federal court[~~. He shall also be~~], branch qualified, and designated as a staff

86 judge advocate officer.

87 (2) The state [~~staff~~] judge advocate is the principal military legal advisor[~~[- He]~~ and
88 shall, in connection with rendering legal advice to the adjutant general, prepare pretrial advice, a
89 post-trial review, and act as legal advisor to the adjutant general on all matters involving
90 military justice, the Utah Manual for Military Courts, and the Utah Code of Military Justice.

91 (3) The adjutant general may appoint assistant state [~~staff~~] judge advocates [~~(ASJA)~~] as
92 [~~he considers~~] considered necessary. They shall be officers of the National Guard, members of
93 the Utah State Bar, branch qualified, and designated as staff judge advocate officers.

94 (4) The [~~SSJA~~] SJA or [~~his assistants~~] an assistant shall make frequent inspections of
95 military units throughout the state to supervise the administration of military justice.

96 (5) The convening authority shall [~~at all times~~] review directly with the [~~SSJA~~] SJA all
97 matters relating to the administration of military justice and administrative actions. The [~~ASJA~~]
98 assistant state judge advocate or legal officer of any command may communicate directly with
99 the [~~ASJA~~] assistant state judge advocate or legal officer of a superior or subordinate
100 command, or with the [~~SSJA~~] SJA.

101 (6) A person who has acted as a member, military judge, trial counsel, assistant trial
102 counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a
103 witness for either the prosecution or defense, may not [~~in any case~~] subsequently act as [~~ASJA~~]
104 assistant state judge advocate, [~~SSJA~~] SJA, or legal officer to any reviewing authority upon the
105 same case.

106 Section 4. Section **39-6-13** is amended to read:

107 **39-6-13. Limits on nonjudicial punishment.**

108 (1) Regulations prescribed by the governor, and additional regulations prescribed by the
109 adjutant general of Utah may place limitations on authority concerning nonjudicial punishment
110 under this chapter, regarding:

111 (a) imposing punishment of any type or amount;

112 (b) the categories of commanding officers who have the authority to impose
113 punishment; [~~and~~]

114 ~~[(c) the applicability of this section to an accused who demands trial by a military~~
115 ~~court.]~~

116 (c) procedures for appeal of nonjudicial findings and punishment; and

117 (d) suspension and reimposition of nonjudicial punishment.

118 ~~[(2)(a) Except when a member is attached to or embarked on a vessel, punishment may~~
119 ~~not be imposed under this section on any person subject to this chapter if the person has, before~~
120 ~~the imposition of the punishment, demanded trial by military court in lieu of the punishment.]~~

121 ~~[(b) Regulations may be made regarding suspension of punishments authorized under~~
122 ~~this chapter.]~~

123 (2) Punishment may be imposed under this section on any person subject to this
124 chapter.

125 (3) Regulations permitting nonjudicial punishment shall provide for de novo review on
126 appeal of both the findings and punishment.

127 (a) Any appeal shall be limited to the next two higher commanding officers.

128 (b) On appeal, the findings or punishment may be modified or set aside.

129 (c) In no case may the appeal increase the amount of punishment originally imposed.

130 (4) The decision of the adjutant general to impose nonjudicial punishment upon a
131 person subject to this chapter or to resolve an appeal of the punishment is final and may not be
132 subject to appeal or judicial review.

133 (5) A person subject to this chapter may request trial by a military court in lieu of
134 nonjudicial punishment at any time prior to imposition of nonjudicial punishment.

135 (a) Upon receipt of a timely request for trial in lieu of nonjudicial punishment, the
136 commanding officer having authority may:

137 (i) deny the request and impose nonjudicial punishment; or

138 (ii) grant the request.

139 (b) Denial of a request for court martial in lieu of nonjudicial punishment may not create
140 a private right of action and is not subject to judicial review.

141 Section 5. Section **39-6-20** is amended to read:

142 **39-6-20. Military judge -- Qualifications -- Designation for detail.**

143 (1) The authority convening a military court shall, subject to regulations made by the
144 governor, detail a military judge to preside over each open session of the court.

145 (2) A military judge shall be:

146 (a) a commissioned officer [~~who is~~];

147 (b) a member of the Utah State Bar[;];

148 (c) a member of the bar of a federal court[;]; and

149 (d) certified as qualified for this duty by the state [staff] judge advocate.

150 (3) (a) The military judge of a military court shall be designated by the state [staff]
151 judge advocate or [his] the SJA's designee for detail by the convening authority.

152 (b) Unless the military court was convened by the governor, neither the adjutant general
153 nor [his] the adjutant general's staff may prepare or review any report concerning the
154 effectiveness, fitness, or efficiency of the detailed military judge that relates to [his] the judge's
155 performance of duty as a military judge.

156 (4) A person is not eligible to act as a military judge in a case if [he] the person:

157 (a) is the accuser[;];

158 (b) is a witness in the case[;];

159 (c) has acted as investigating officer[;]; or

160 (d) is a counsel in the same case.

161 (5) The military judge of a court may not:

162 (a) consult with the members of the court, except in the presence of the accused, trial
163 counsel, and defense counsel; or

164 (b) vote with the members of the court.

165 Section 6. Section **39-6-27** is amended to read:

166 **39-6-27. Review of charge by SJA -- Corrections to charges.**

167 (1) (a) Before directing the trial of any charge by a military court, the convening
168 authority shall refer it to the [~~SSJA~~] SJA for consideration and advice.

169 (b) The convening authority may not refer a charge to a military court for trial unless he

170 or she has found that the charge alleges an offense under this chapter and is warranted by
171 sufficient evidence, as indicated in the report of the investigation.

172 (2) If the charges or specifications are not formally correct or do not conform to the
173 substance of the evidence contained in the report of the investigating officer, formal corrections
174 and changes in the charges and specifications as necessary may be made to conform to the
175 evidence.

176 Section 7. Section **39-6-54** is amended to read:

177 **39-6-54. Convening authority refers record to SJA -- Opinion.**

178 The convening authority shall refer the record of each military court to the [~~SSJA~~] SJA,
179 who shall submit [~~his~~] a written opinion to the convening authority. If the final action of the
180 court is an acquittal of all charges and specifications, the opinion is limited to questions of
181 jurisdiction.

182 Section 8. Section **39-6-58** is amended to read:

183 **39-6-58. Convening authority review -- Action by governor final -- SJA review --**
184 **Appeal of final action.**

185 (1) When the governor is the convening authority, [~~his~~] the governor's action on the
186 review of a record of trial is final.

187 (2) The state [~~staff~~] judge advocate shall review the record of trial in each case prior to
188 final action being taken.

189 (3) The [~~SSJA~~] SJA shall make a written review and recommendation on legal issues to
190 the convening authority for its consideration prior to final action in any case.

191 (4) In a case subject to review by the [~~SSJA~~] SJA under this section, [~~he~~] the SJA shall
192 submit [~~his~~] an opinion regarding any errors committed during the trial and [~~his~~] an analysis of
193 the legal effect of the error to the convening authority prior to its affirmation and action
194 regarding the findings and sentence in the case.

195 (5) The convening authority may affirm only findings of guilty and the sentence or part
196 of the sentence [~~he~~] that:

197 (a) [~~finds~~] is correct in law and fact; and

198 (b) [~~determines~~] should be approved, based on the entire record and the advice of the
199 [~~SSJA~~] SJA, and any rebuttal submitted by the accused or [~~his~~] defense counsel.

200 (6) In considering the record, the convening authority may weigh the evidence, judge
201 the credibility of witnesses, and determine controverted questions of fact, recognizing that the
202 trial court saw and heard the testimony of the witnesses.

203 (7) If the convening authority sets aside the findings and sentence:

204 (a) [~~he may order~~] a rehearing may be ordered, except when the decision to set aside is
205 based on a lack of sufficient evidence in the record to support the findings; or

206 (b) if [~~he does not order~~] a rehearing is not ordered, [~~he shall dismiss~~] the charges shall
207 be dismissed.

208 (8) (a) Final action approved by the convening authority may be appealed directly to the
209 Utah Court of Appeals.

210 (b) Notice of appeal shall be filed within 30 days after the final action has been taken by
211 the convening authority.