

**MILITARY JUSTICE CODE AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Peter C. Knudson**

House Sponsor: Wayne A. Harper

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**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



- 28           **39-6-27**, as enacted by Laws of Utah 1988, Chapter 210
- 29           **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



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  
45 prosecution 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  
56 of 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,  
89 a 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  
 98 ~~[ASJA]~~ assistant state judge advocate or legal officer of any command may communicate  
 99 directly with the ~~[ASJA]~~ assistant state judge advocate or legal officer of a superior or  
 100 subordinate 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  
 109 the adjutant general of Utah may place limitations on authority concerning nonjudicial  
 110 punishment 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~~  
 119 ~~may not be imposed under this section on any person subject to this chapter if the person has,~~  
 120 ~~before the imposition of the punishment, demanded trial by military court in lieu of the~~

121 punishment.]

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

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

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

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

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

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

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

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

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

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

139 (ii) grant the request.

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

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

143 **39-6-20. Military judge -- Qualifications -- Designation for detail.**

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

146 (2) A military judge shall be:

147 (a) a commissioned officer [who is];

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

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

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

151 (3) (a) The military judge of a military court shall be designated by the state [staff]

152 judge advocate or [his] the SJA's designee for detail by the convening authority.

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

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

158 (a) is the accuser[;];

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

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

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

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

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

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

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

167 **39-6-27. Review of charge by SJA -- Corrections to charges.**

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

170 (b) The convening authority may not refer a charge to a military court for trial unless  
171 he or she has found that the charge alleges an offense under this chapter and is warranted by  
172 sufficient evidence, as indicated in the report of the investigation.

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

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

178 **39-6-54. Convening authority refers record to SJA -- Opinion.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Legislative Review Note**  
as of 2-6-08 6:30 PM

**Office of Legislative Research and General Counsel**

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**S.B. 275 - Military Justice Code Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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