

NATIONAL GUARD - NONJUDICIAL PUNISHMENT

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill makes clarifying changes to the nonjudicial punishment section of the Utah Code of Military Justice.

Highlighted Provisions:

This bill:

- ▶ specifies the commanders' parameters for nonjudicial punishment;
- ▶ provides guidelines for nonjudicial punishment for enlisted personnel and officers;
- ▶ sets out appeal avenues and limits; and
- ▶ directs who can mitigate nonjudicial punishment.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

REPEALS AND REENACTS:

39-6-14, as last amended by Laws of Utah 1989, Chapter 15

REPEALS:

39-6-13, as last amended by Laws of Utah 2008, Chapter 287

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **39-6-14** is repealed and reenacted to read:

39-6-14. Nonjudicial punishment.

30 (1) The governor and the adjutant general of Utah may prescribe regulations governing
31 the administration of nonjudicial punishment. The imposition and enforcement of disciplinary
32 punishment under this section for any act or omission is not a bar to trial by a civilian court of
33 competent jurisdiction.

34 (2) A service member subject to this chapter may request trial by military court in lieu
35 of nonjudicial punishment at any time prior to imposition of nonjudicial punishment.

36 (a) Upon receipt of a timely request for trial by military court in lieu of nonjudicial
37 punishment, the commanding officer may grant the request, or deny the request and continue
38 with nonjudicial punishment proceedings. If the commander denies the member's request for
39 trial by military court, the commander may not impose limitations on personal liberty as a
40 punishment under nonjudicial punishment proceedings. For purposes of this section,
41 punishments imposing limitations on personal liberty include restriction to specific limited
42 areas and extra duties.

43 (b) Denial of a request for trial by military court in lieu of nonjudicial punishment does
44 not create a private right of action and is not subject to judicial review.

45 (3) Any commanding officer in the Utah National Guard may, in addition to a
46 reprimand, impose one or more of the punishments under this section without the intervention
47 of a military court. Forfeiture of pay shall be calculated based on the monthly amount a service
48 member would receive as base pay if on active duty. If a reduction of pay grade is imposed,
49 forfeiture of pay is based on the grade to which the service member was reduced even if the
50 reduction was suspended.

51 (4) Punishment imposed by the governor, a general officer, or a full colonel upon
52 officers within the general officer's or full colonel's command may include:

53 (a) forfeiture of not more than one-half of one month's pay per month for three months;
54 and

55 (b) restriction to specific limited areas, with or without suspension from duty, for not
56 more than 60 consecutive days.

57 (5) Punishment imposed by the governor, a general officer, or a full colonel upon

58 enlisted personnel within the general officer's or full colonel's command may include:

59 (a) forfeiture of not more than one-half of one month's pay per month for two months;

60 (b) reduction of one or more pay grades if the imposing commander holds promotion
61 authority over the grade from which the enlisted person was demoted, but an enlisted member
62 in a pay grade above E-4 may not be reduced more than two pay grades;

63 (c) extra duties, including fatigue or other duties, for not more than 60 consecutive
64 days; and

65 (d) restriction to specific limited areas, with or without suspension from duty, for not
66 more than 60 consecutive days.

67 (6) Punishment imposed by a commander of the grade of lieutenant colonel or major
68 upon enlisted personnel within the lieutenant colonel's or major's command may include:

69 (a) forfeiture of not more than one-half of one month's pay per month for two months;

70 (b) reduction of no more than two pay grades if the imposing commander holds
71 promotion authority over the grade from which the enlisted person was demoted;

72 (c) extra duties, including fatigue or other duties, for not more than 45 consecutive
73 days; and

74 (d) restriction to specific limited areas, with or without suspension of duty, for not
75 more than 45 consecutive days.

76 (7) Punishment imposed by a commander of the grade of captain or lieutenant upon
77 enlisted personnel within the captain's or lieutenant's command may include:

78 (a) forfeiture of not more than one-half of one month's pay for one month;

79 (b) extra duties, including fatigue or other duties, for not more than 30 consecutive
80 days;

81 (c) restriction to specific limited areas, with or without suspension from duty, for not
82 more than 30 consecutive days; and

83 (d) reduction of one pay grade if the imposing commander holds promotion authority
84 over the grade from which the enlisted person was demoted.

85 (8) Punishments of restriction to specific limited areas and extra duty may be combined

86 to run concurrently, but the combination may not exceed the maximum duration imposable for
87 extra duty.

88 (9) (a) The imposing commander or a successor in command may, at any time, suspend
89 by probation:

90 (i) all or any part of the amount of the unexecuted punishment; and

91 (ii) a reduction in grade or a forfeiture imposed, whether or not executed.

92 (b) The imposing commander or a successor in command shall set the terms of
93 probation for any suspended punishment.

94 (c) The imposing commander or a successor in command may, at any time, remit or
95 mitigate any part or amount of the unexecuted punishment. The imposing commander or a
96 successor in command may also set aside in whole or in part the findings, punishment, or both,
97 whether executed or unexecuted, and restore all rights, privileges, and affected property.

98 (d) The imposing commander or a successor in command may mitigate reduction in
99 grade to forfeiture of pay. Extra duties may be mitigated to restriction.

100 (e) A mitigated punishment may not span a greater period of time than the original
101 punishment.

102 (f) When mitigating a reduction in grade to forfeiture of pay, the amount of the
103 forfeiture may not exceed the maximum allowable forfeiture the imposing commander could
104 have originally imposed.

105 (10) (a) A service member punished under this section may appeal to the next superior
106 commander in the service member's chain of command. The next superior commander shall
107 conduct a de novo review of both the findings and punishment under procedures provided by
108 regulation. The next superior commander may modify or set aside the findings or punishment,
109 having the same options afforded the imposing commander as described in this section. In no
110 case may the next superior commander increase the severity of the findings or the amount of
111 punishment originally imposed.

112 (b) If two levels of command exist above the imposing commander, the service
113 member, having exhausted the service member's first level of appeal, may appeal to the next

114 superior commander. If the matter originates with the governor, the adjutant general, or one
115 level of command below the adjutant general, no right to a second appeal exists. The decision
116 of the adjutant general on an appeal of nonjudicial punishment is final and is not subject to
117 further appeal or judicial review.

118 (c) The decision of the governor or the adjutant general to impose nonjudicial
119 punishment upon a service member is final and is not subject to further appeal or judicial
120 review.

121 (d) The imposing commander shall promptly forward any appeal to the next superior
122 commander. During the course of the appeal, the imposing commander may require the
123 appellant to submit to the imposed punishment.

124 (11) A superior commander shall first obtain a legal review from a judge advocate of
125 the Utah National Guard before acting on an appeal from any of the following imposed
126 punishments:

127 (a) forfeiture of more than seven day's pay;

128 (b) reduction of one or more pay grades;

129 (c) extra duties for more than 14 days; or

130 (d) restriction for more than 14 days.

131 (12) Punishments imposed under this section, except forfeiture of pay, may not extend
132 beyond the termination of the duty status of the punished individual.

133 Section 2. **Repealer.**

134 This bill repeals:

135 Section **39-6-13, Limits on nonjudicial punishment.**