

## HB0301S01 compared with HB0301

~~{deleted text}~~ shows text that was in HB0301 but was deleted in HB0301S01.

inserted text shows text that was not in HB0301 but was inserted into HB0301S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Val L. Peterson proposes the following substitute bill:

### NATIONAL GUARD - NONJUDICIAL PUNISHMENT

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Val L. Peterson**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill makes clarifying changes to the nonjudicial punishment section of the ~~{Uniform}~~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:

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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

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 Section **39-6-14** is repealed and reenacted to read: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

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

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

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

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

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

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

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

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

(5) Punishment imposed by the governor, a general officer, or a full colonel upon enlisted personnel within the general officer's or full colonel's command may include:

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

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

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

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

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

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

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

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

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

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

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

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

(c) restriction to ~~{certain specified limits}~~ specific limited areas, with or without

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suspension from duty, for not more than 30 consecutive days; and

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

(8) ~~{If the imposed punishment includes both extra duties and}~~ Punishments of restriction to specific ~~{areas, the commander may not impose the maximum amount of time designated for each of these punishments but shall apportion these punishments as if they were imposed consecutively}~~ limited areas and extra duty may be combined to run concurrently, but the combination may not exceed the maximum duration imposable for extra duty.

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

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

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

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

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

(d) The imposing commander or a successor in command may mitigate reduction in grade to forfeiture of pay.~~f~~

~~\_\_\_\_\_~~ (e) The imposing commander may not mitigate punishment for} 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,

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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) fine or 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.

### **Section 2. Repealer.**

This bill repeals:

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

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**Legislative Review Note**

~~as of 1-24-12 2:57 PM~~

~~Office of Legislative Research and General Counsel}~~