

1 **NATIONAL GUARD - NONJUDICIAL PUNISHMENT**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Val L. Peterson**

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

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**LONG TITLE**

7 **General Description:**

8 This bill makes clarifying changes to the nonjudicial punishment section of the Uniform  
9 Code of Military Justice.  
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11 **Highlighted Provisions:**

12 This bill:

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

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **REPEALS AND REENACTS:**

23 **39-6-14**, as last amended by Laws of Utah 1989, Chapter 15

24 **REPEALS:**

25 **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:*  
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28 Section 1. Section **39-6-14** is repealed and reenacted to read:

29 **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.

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

34 (a) Upon receipt of a timely request for trial by military court in lieu of nonjudicial  
35 punishment, the commanding officer may grant the request, or deny the request and continue  
36 with nonjudicial punishment proceedings. If the commander denies the member's request for  
37 trial by military court, the commander may not impose limitations on personal liberty as a  
38 punishment under nonjudicial punishment proceedings.

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

41 (3) Any commanding officer in the Utah National Guard may, in addition to a  
42 reprimand, impose one or more of the punishments under this section without the intervention  
43 of a military court.

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

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

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

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

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

53 (b) reduction of one or more pay grades if the imposing commander holds promotion  
54 authority over the grade from which the enlisted person was demoted;

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

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

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

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

62 (b) reduction of no more than two pay grades if the imposing commander holds

63 promotion authority over the grade from which the enlisted person was demoted;

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

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

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

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

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

73 (c) restriction to certain specified limits, with or without suspension from duty, for not  
74 more than 30 consecutive days; and

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

77 (8) If the imposed punishment includes both extra duties and restriction to specific  
78 areas, the commander may not impose the maximum amount of time designated for each of  
79 these punishments but shall apportion these punishments as if they were imposed  
80 consecutively.

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

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

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

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

87 (c) The imposing commander may, at any time, remit or mitigate any part or amount of  
88 the unexecuted punishment. The imposing commander may also set aside in whole or in part  
89 the punishment, whether executed or unexecuted, and restore all rights, privileges, and affected

90 property.

91 (d) The imposing commander may mitigate reduction in grade to forfeiture of pay.

92 (e) The imposing commander may not mitigate punishment for a greater period of time  
93 than the original punishment.

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

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

104 (b) If two levels of command exist above the imposing commander, the service  
105 member, having exhausted the service member's first level of appeal, may appeal to the next  
106 superior commander. If the matter originates with the governor, the adjutant general, or one  
107 level of command below the adjutant general, no right to a second appeal exists. The decision  
108 of the adjutant general on an appeal of nonjudicial punishment is final and is not subject to  
109 further appeal or judicial review.

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

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

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

119 (a) fine or forfeiture of more than seven day's pay;

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

- 121            (c) extra duties for more than 14 days; or  
122            (d) restriction for more than 14 days.  
123            (12) Punishments imposed under this section, except forfeiture of pay, may not extend  
124 beyond the termination of the duty status of the punished individual.  
125            Section 2. **Repealer.**  
126            This bill repeals:  
127            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**