

UTAH CODE OF MILITARY JUSTICE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides Utah military commanders authority to prosecute or punish violations of the Utah Code of Military Justice when committed while on federal military status.

Highlighted Provisions:

This bill:

- amends Utah Code to grant commanders authority to punish violators under duty governed by Title 32, United States Code; and
makes technical corrections to definitions and designations for the Utah Code of Military Justice.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 39-1-40.5, as last amended by Laws of Utah 1996, Chapter 198
39-6-1, as enacted by Laws of Utah 1988, Chapter 210
39-6-2, as last amended by Laws of Utah 2008, Chapter 287
39-6-15, as enacted by Laws of Utah 1988, Chapter 210
39-6-113, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9



28 **39-6-114**, as last amended by Laws of Utah 1996, Chapter 79



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

31 Section 1. Section **39-1-40.5** is amended to read:

32 **39-1-40.5. Utah Code of Military Justice -- Procedures -- Jurisdiction.**

33 (1) Title 39, Chapter 6, is adopted as the Utah Code of Military Justice, which may also
34 be referred to as the [~~UCMJ~~] UtCMJ.

35 (2) The [~~UCMJ~~] UtCMJ sets forth offenses which, if committed by personnel of the
36 Utah National Guard serving under this title or Title 32, United States Code, are punishable as
37 the Utah Military Court directs under regulations made and published under the [~~UCMJ~~]
38 UtCMJ.

39 (3) The Utah Military Court is a court of the state, convened under orders issued by the
40 governor or the adjutant general. Judges of the court may issue summons, executions, and
41 other process. The process shall be served by county sheriffs, at the expense of the state.

42 (4) Judgments for fines or forfeitures may be docketed in the same manner as district
43 court judgments in each county, and without costs.

44 (5) Appeals shall be taken to the Court of Appeals.

45 (6) Sentences of the Utah Military Court shall be served in a county jail. Costs
46 incurred by the county shall be paid out of the General Fund of the state.

47 (7) Certification as counsel for prosecution or defense, or as a judge of the Utah
48 Military Court, is under orders issued by the adjutant general, and is limited to attorneys who
49 are members of the Utah State Bar and are serving as judge advocates in the Utah National
50 Guard.

51 (8) A defendant may retain, at no cost to the state or National Guard, civilian counsel
52 to represent him before the Utah Military Court.

53 (9) The Utah Military Court may impose fines not exceeding \$2,500, restitution to
54 victims, statutory surcharges, and may issue all writs and judgments for the execution of any of
55 them.

56 (10) When consistent with the Utah Manual for Military Courts, the Utah Rules of
57 Criminal Procedure apply in Utah Military Courts.

58 Section 2. Section **39-6-1** is amended to read:

59 **CHAPTER 6. UTAH CODE OF MILITARY JUSTICE**60 **39-6-1. Title.**

61 This chapter is known [~~and may be cited~~] as the "Utah Code of Military Justice," and
62 may also be cited as the [~~"UCMJ."~~] "UtCMJ."

63 Section 3. Section **39-6-2** is amended to read:

64 **39-6-2. Definitions.**

65 As used in this chapter:

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

67 (a) signs and swears to charges;

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

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

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

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

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

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

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

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

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

82 (9) "Major command" or "MACOM" means a major subdivision of the Utah National
83 Guard.

84 (10) "Military" means any or all of the armed forces of the United States.

85 (11) "Military court" means a court-martial, a court of inquiry, or a provost court.

86 (12) "Military judge" means a qualified staff judge advocate officer of a military court
87 detailed under Section [39-6-20](#).

88 (13) "National Guard" means the Utah Army and Air National Guard, including
89 part-time and full-time active guard and reserve (AGR), and includes the Utah unorganized

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

91 (14) "Officer" means commissioned or warrant officer.

92 (15) "Rank" means the order of precedence among members of the armed forces.

93 (16) "State active duty" means full-time duty in the active military service of the state
94 under an order of the governor, issued pursuant to the governor's authority, and includes going
95 to and returning from the duty.

96 (17) "State judge advocate" or "SJA" means the commissioned officer responsible for
97 supervising the administration of the military justice in the National Guard, and qualified and
98 designated as judge advocate general corps officer.

99 (18) "Superior commissioned officer" means a commissioned officer superior to
100 another in rank or command.

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

102 Section 4. Section **39-6-15** is amended to read:

103 **39-6-15. Military court -- Composition.**

104 (1) In the National Guard that is not in federal service, there is a military court to hear
105 matters designated under the [~~UCMJ~~] UtCMJ.

106 (2) The court shall be composed of:

107 (a) a military judge and not fewer than three members; or

108 (b) a military judge, if before the court is assembled, the accused, knowing the identity
109 of the military judge and after consultation with his defense counsel, requests in writing a court
110 composed only of a military judge, and the military judge approves the request.

111 Section 5. Section **39-6-113** is amended to read:

112 **39-6-113. Jurisdiction over offenses.**

113 (1) A [~~person~~] member may not be tried or punished by court-martial or non-judicial
114 punishment respectively for any offense under Sections **39-6-66** through **39-6-106**, unless the
115 offense was committed while [~~he~~] the member was in a military duty status [~~that includes but is~~
116 ~~not limited to annual training, inactive duty for training, drill, duty~~] under Title [~~10 or~~] 32,
117 United States Code, or while on state active duty orders.

118 (2) Nothing in this section shall limit a commander's authority to use adverse
119 administrative action to address misconduct by a member, regardless of the member's status at
120 the time of the misconduct.

121 Section 6. Section **39-6-114** is amended to read:

122 **39-6-114. Chapter interpretation -- Federal law.**

123 Cases from the ~~H~~→ **Supreme Court of the United States and the** ~~[federal]~~ ~~[H]~~ Court
 123a **of Appeals for the Armed Forces** ~~[H]~~ ~~←H~~ ~~[and the federal Courts~~
 124 ~~of Criminal Appeals]~~ ~~H~~→ **[Courts of Appeal and the Court of Criminal Appeals for the Armed**
 125 **Forees]** ~~←H~~ that interpret provisions of the Uniform Code of Military Justice ~~[shall be followed]~~
 125a and
 126 the Manual for Courts-Martial United States shall be relied upon in interpretation of
 127 corresponding provisions of ~~H~~→ **[the UCMJ], Title 39, Chapter 6, Utah Code of Military**
 127a **Justice** ~~[Section 39-6-24 and Sections 39-6-66 through~~
 128 **39-6-106]** ~~←H~~ ~~[, where appropriate and applicable].~~

Legislative Review Note
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Office of Legislative Research and General Counsel