

1                   **UTAH CODE OF MILITARY JUSTICE AMENDMENTS**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

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

5                                   Senate Sponsor: Peter C. Knudson

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12                   This bill:

13                   ▶ amends Utah Code to grant commanders authority to punish violators under duty  
14 governed by Title 32, United States Code; and

15                   ▶ makes technical corrections to definitions and designations for the Utah Code of  
16 Military Justice.

17 **Money Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23                   **39-1-40.5**, as last amended by Laws of Utah 1996, Chapter 198

24                   **39-6-1**, as enacted by Laws of Utah 1988, Chapter 210

25                   **39-6-2**, as last amended by Laws of Utah 2008, Chapter 287

26                   **39-6-15**, as enacted by Laws of Utah 1988, Chapter 210

27                   **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

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