

29B.65 Review of records — disposition.

1. If the convening authority is the governor or adjutant general, the convening authority's action on the review of any record of trial is final.

2. In all other cases not covered by subsection 1, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, dishonorable discharge, dismissal, or confinement, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial.

3. All other special and summary court-martial records shall be sent to the appropriate staff judge advocate of the state force concerned and shall be acted upon, transmitted, and disposed of as prescribed by rules of the adjutant general.

4. *a.* The staff judge advocate of the state force concerned shall review the record of trial in each case sent for review as provided under this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the staff judge advocate is limited to questions of jurisdiction.

b. The staff judge advocate shall take final action in any case reviewable by the staff judge advocate.

5. In a case reviewable by the appropriate staff judge advocate under this section, the staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The staff judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the staff judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In consideration of the record, the staff judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the staff judge advocate sets aside the findings and sentence, the staff judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the staff judge advocate sets aside the findings and sentence and does not order a rehearing, the staff judge advocate shall order that the charges be dismissed.

6. In a case reviewable by the staff judge advocate under this section, the staff judge advocate shall instruct the convening authority to act in accordance with the decision on the review. If the staff judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the staff judge advocate may dismiss the charges.

7. The staff judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by court-martial including a sentence to a dishonorable discharge, dismissal or confinement, referred to it by the staff judge advocate. Boards of review have the same authority on review as the staff judge advocate has under this section.

[C66, 71, 73, 75, 77, 79, 81, §29B.65; 82 Acts, ch 1042, §38]

2002 Acts, ch 1117, §48, 52; 2008 Acts, ch 1032, §201

Referred to in §29B.60