

MICHIGAN CODE OF MILITARY JUSTICE OF 1980 (EXCERPT)
Act 523 of 1980

32.1065 Finality of action on review of trial record where governor is convening authority; review of trial record by state judge advocate general; opinion; final action; authority of governor or state judge advocate general in reviewable cases; instructing convening authority to take action pursuant to state judge advocate general's decision or review; exception; dismissal of charges upon finding rehearing impracticable; boards of review; composition; authority and powers; effect of error of law on finding or sentence; approving or affirming so much of finding of guilty which includes lesser included offense.

Sec. 65. (1) If the convening authority is the governor, the action on the review of a record of trial shall be final.

(2) In all other cases:

(a) If the convening authority has taken final action in a general court-martial case, the convening authority shall forward the entire record including the action on the case and the opinion of the staff judge advocate or legal officer to the state judge advocate general for review.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command, to be reviewed in the same manner as a record of trial by a general court-martial. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad conduct discharge, whether or not suspended, the entire record including the officer's action on the sentence and the opinion of the staff judge advocate, shall be forwarded to the state judge advocate general for review.

(c) All other special and summary courts-martial records shall be forwarded to a judge advocate and shall be acted upon, transmitted, and disposed of as prescribed by rules promulgated pursuant to section 147.

(3) The state judge advocate general shall review the record of trial in each case forwarded for review as provided in this section. If the sentence as approved affects a general officer or extends to the dismissal of an officer, the state judge advocate general shall submit a written opinion on the sentence to the governor. If the final action of the court-martial in a case forwarded to the state judge advocate general results in an acquittal of the charges and specifications, the opinion of the state judge advocate general shall be limited to questions of jurisdiction.

(4) In each case reviewable by the state judge advocate general which does not affect a general officer or extend to the dismissal of an officer, the state judge advocate general shall take final action.

(5) In a case reviewable by the governor in which the governor is not the convening authority and in a case reviewable by the state judge advocate general, the governor or the state judge advocate general shall have authority to do any of the following:

(a) Act only with respect to the findings and sentence as approved by the convening authority.

(b) Affirm only those findings of guilty, and the sentence or that part or amount of the sentence as the governor or the state judge advocate general finds correct in law and fact and determines on the basis of the entire record should be approved.

(c) Weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) Order a rehearing if the governor or the state judge advocate general sets aside the findings and sentence, except if the setting aside is based on lack of sufficient evidence to support the findings.

(e) Order that the charges be dismissed if the governor or the state judge advocate general sets aside the findings and sentence and does not order a rehearing.

(6) Unless the governor is to take further action, the state judge advocate general shall instruct the convening authority to take action pursuant to the state judge advocate's decision on a review. If a rehearing has been ordered, but the convening authority finds a rehearing impracticable, the state judge advocate general may dismiss the charges.

(7) The state judge advocate general may constitute 1 or more boards of review each composed of not fewer than 3 officers of the organized militia or retired list, each of whom shall be a member of the bar of this state, which board of review shall review the record of a trial by court-martial referred to it by the state judge advocate general. The board of review shall have the same authority and powers on the review of a record as the state judge advocate general has under this section.

(8) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(9) A reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding which includes a lesser included offense.

History: 1980, Act 523, Eff. Mar. 31, 1981.

Administrative rules: R 32.171 et seq. of the Michigan Administrative Code.