

35.320 Disposition of record after review by convening authority.

- (1) If the convening authority is the Governor, he shall refer the record of courts-martial to the state judge advocate who shall submit his written opinion to the Governor. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. After consideration of the opinion, the Governor's action on review of any record is final.
- (2)
 - (a) Except as provided in subsection (1) of this section, the convening authority may refer the record of a general court-martial to the staff judge advocate designated by the state judge advocate who shall submit his written opinion to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. When the convening authority has taken final action he shall forward the entire record, including his action thereon and the opinion of the staff judge advocate, to the state judge advocate for review.
 - (b) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only the findings of guilty, and the sentence or part or amount of the sentence, as he finds correct in law and fact and determined on the basis of the entire record, should be approved. In considering the record he 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 state judge advocate sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.
 - (c) The state judge advocate shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.
- (3) Except as provided in subsection (1) of this section, the convening authority of any summary or special court-martial, after taking final action on review, shall forward the entire record, including his action thereon, to the staff judge advocate designated by the state judge advocate. The staff judge advocate has the duties and powers as provided for the state judge advocate in paragraphs (b) and (c) of subsection (2) of this section.
- (4) The state judge advocate may order one (1) or more boards of review each composed of not less than three (3) commissioned officers of the National Guard or active militia, 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 special court-martial referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section.

History: Amended 1970 Ky. Acts ch. 56, sec. 45. -- Created 1954 Ky. Acts ch. 99, sec. 63, effective July 1, 1954.