

48-2926. (KCMJ Art. 71) Execution of sentence; suspension of sentence. (a) If, in the case of a commissioned officer, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the adjutant general. In such a case, the governor may commute, remit or suspend the sentence, or any part of the sentence, as the governor sees fit. In time of war or national emergency, the governor may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(b) (1) If a sentence extends to dismissal, or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under K.S.A. 48-2917 that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings and, with respect to dismissal, approval under subsection (a) as appropriate. A judgment as to legality of the proceedings is final in such cases when review is completed by a court of military review and:

(A) The time for the accused to file a petition for review by the Kansas court of appeals has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that court;

(B) such a petition is rejected by the Kansas court of appeals; or

(C) review is completed in accordance with the judgment of the Kansas court of appeals.

(2) If a sentence extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under K.S.A. 48-2917, that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate, and any action on that review, under K.S.A. 48-2920 is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under K.S.A. 48-2916 when approved by such person under that section.

(c) The convening authority or other person acting on the case under K.S.A. 48-2916 may suspend the execution of any sentence or part thereof.

History: L. 1988, ch. 191, § 48; July 1.