

SEC. 5. The second sentence of section 1677(b) of title 38, United States Code, is amended to read as follows: "Such allowance shall be paid monthly upon receipt of a certification from the eligible veteran and the institution as to the actual flight training received by, and the cost thereof to, the veteran during such month."

81 Stat. 185.

SEC. 6. (a) The amendments made by the first section and sections 2, 3, and 5 of this Act shall take effect on the first day of the second calendar month which begins after the date of the enactment of this Act.

(b) The amendments made by section 4 of this Act shall apply with respect to contracts and agreements entered into under section 1774 of title 38, United States Code, effective for periods beginning after June 30, 1968.

Approved October 23, 1968.

Public Law 90-632

AN ACT

To increase the participation of military judges and counsel on courts-martial, and for other purposes.

October 24, 1968
[H. R. 15971]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Military Justice Act of 1968".

Military Justice
Act of 1968.

Sec. 2. Chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, is amended as follows:

(1) Section 801(10) (article 1(10)) is amended to read as follows:

"(10) 'Military judge' means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).".

(2) Section 806(c) is amended by striking out "law officer" and inserting in lieu thereof "military judge".

(3) Section 816 (article 16) is amended to read as follows:

70A Stat. 37.

“§ 816. Art. 16. Courts-martial classified

"The three kinds of courts-martial in each of the armed forces are—

"(1) general courts-martial, consisting of—

"(A) a military judge and not less than five members; or

"(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

"(2) special courts-martial, consisting of—

"(A) not less than three members; or

"(B) a military judge and not less than three members; or

"(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

"(3) summary courts-martial, consisting of one commissioned officer."

(4) Section 818 (article 18) is amended by adding the following sentence at the end thereof: "However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case."

(5) Section 819 (article 19) is amended by striking out the last sentence and inserting the following sentence in place thereof: "A bad-

70A Stat. 46;
81 Stat. 546.

70A Stat. 43.

Post, p. 1338.

10 USC 822-
829.

conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed."

(6) The second and third sentences of section 820 (article 20) are amended to read as follows: "No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate."

(7) Section 825(c) (1) (article 25(c)(1)) is amended—

(A) by striking out "before the convening of the court," in the first sentence and inserting "before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused," in place thereof; and

(B) by striking out "convened" in the last sentence and inserting "assembled" in place thereof.

(8) Subchapter V is amended by striking out the following item in the analysis:

"826. 26. Law officer of a general court-martial."

and inserting the following item in place thereof:

"826. 26. Military judge of a general or special court-martial."

(9) Section 826 (article 26) is amended to read as follows:

“§ 826. Art. 26. Military judge of a general or special court-martial

“(a) The authority convening a general court-martial shall, and, subject to regulations of the Secretary concerned, the authority convening a special court-martial may, detail a military judge thereto. A military judge shall preside over each open session of the court-martial to which he has been detailed.

“(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

“(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail by the convening authority, and, unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him

by or with the approval of that Judge Advocate General or his designee.

“(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

“(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.”

(10) Section 827 is amended—

(A) by striking out “law officer” in the second sentence of subsection (a) and inserting in lieu thereof “military judge”; and

(B) by redesignating paragraphs (1) and (2) of subsection (c) as paragraphs (2) and (3), respectively, and by inserting a new paragraph (1) as follows:

“(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained.”

(11) Section 829 (article 29) is amended—

(A) by striking out “accused has been arraigned” in subsection (a) and inserting “court has been assembled for the trial of the accused” in place thereof;

(B) by inserting “, other than a general court-martial composed of a military judge only,” after “court-martial” in the first sentence of subsection (b); and by amending the last sentence of subsection (b) to read as follows: “The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.”;

(C) by inserting “, other than a special court-martial composed of a military judge only,” after “court-martial” in the first sentence of subsection (c); and by amending the last sentence of subsection (c) to read as follows: “The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.”; and

(D) by adding the following new subsection at the end thereof:

“(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816 (1)(B) or (2)(C) of this title (article 16 (1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.”

(12) Section 835 (article 35) is amended by striking out the second sentence and inserting the following in place thereof: “In time of peace no person may, against his objection, be brought to trial, or be

70A Stat. 46.

81 Stat. 546.

Ante, p. 1335.

Intra.

70A Stat. 50.

required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him."

(13) Section 837 (article 37) is amended—

(A) by inserting "(a)" at the beginning of the first sentence thereof;

(B) by striking out "law officer" in the first sentence and inserting in lieu thereof "military judge";

(C) by adding at the end thereof the following new sentence: "The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.";

(D) by adding after subsection (a) (as designated by paragraph (1) hereof) a new subsection as follows:

"(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial."

(14) Section 838(b) (article 38(b)) is amended by striking out the words "president of the court" in the last sentence and inserting the words "military judge or by the president of a court-martial without a military judge" in place thereof.

(15) Section 839 (article 39) is amended to read as follows:

“§ 839. Art. 39. Sessions

“(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

“(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

“(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

“(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

“(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

“(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.”

(16) Section 840 (article 40) is amended to read as follows:

70A Stat. 51.

“§ 840. Art. 40. Continuances

“The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.”

(17) Section 841 (article 41) is amended—

(A) by amending the first sentence of subsection (a) to read as follows: “The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court.”;

(B) by striking out the word “court” in the second sentence of subsection (a) and inserting the words “military judge, or, if none, the court,” in place thereof; and

(C) by striking out “law officer” in subsection (b) and inserting in lieu thereof “military judge”.

(18) Section 842(a) (article 42(a)) is amended to read as follows:

“(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate, law specialist, or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, law specialist, or other person is detailed to that duty.”

(19) Section 845 (article 45) is amended—

(A) by striking out the words “arraigned before a court-martial” in subsection (a) and inserting the words “after arraignment” in place thereof; and

(B) by amending subsection (b) to read as follows:

“(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless

70A Stat. 53.

the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty."

(20) Section 849(a) (article 49(a)) is amended by inserting after the word "unless" the words "the military judge or court-martial without a military judge hearing the case or, if the case is not being heard,".

(21) Section 851 (article 51) is amended—

(A) by amending the first sentence of subsection (a) to read as follows: "Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot.";

(B) by amending the first three sentences of subsection (b) to read as follows: "The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial."

(C) by striking out the words "law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court" in the first sentence of subsection (c) and inserting the words "military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them" in place thereof; and

(D) by adding the following new subsection at the end thereof:

"(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein."

(22) Section 852 (article 52) is amended—

(A) by inserting the words "as provided in section 845(b) of this title (article 45(b)) or" after the word "except" in subsection (a)(2); and

(B) by inserting immediately before the period in the first sentence of subsection (c) the words ", but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence."

(23) Section 854(a) (article 54(a)) is amended to read as follows:

"(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be

authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the President."

(24) Section 857 (article 57) is amended by inserting the words "or deferred" after "suspended" in subsections (a) and (b); and by adding at the end thereof a new subsection as follows:

"(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned."

(25) The table of sections at the beginning of subchapter IX is amended by striking out

10 USC 859-
876.

"866. 66. Review by board of review."

and inserting in lieu thereof the following:

"866. 66. Review by Court of Military Review".

(26) Section 865(b) is amended by striking out "board of review" each time it appears therein and inserting in lieu thereof "Court of Military Review".

(27) Section 866 (article 66) is amended—

(A) by striking out the catchline and inserting in lieu thereof the following:

"§ 866. Art. 66. Review by Court of Military Review";

(B) by amending subsection (a) to read as follows:

"(a) Each Judge Advocate General shall establish a Court of Military Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Appellate military judges who are assigned to a Court of Military Review may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Military Review established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to

the court will serve and which military judge assigned to the court will act as the senior judge on each panel.”;

(C) by striking out “board of review” each time it appears in subsections (b), (c), (d), and (e) and inserting in lieu thereof “Court of Military Review”;

(D) by striking out “boards of review” each time it appears in subsection (f) and inserting in lieu thereof “Courts of Military Review”; and

(E) by adding at the end thereof the following new subsections:

“(g) No member of a Court of Military Review shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Military Review, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

“(h) No member of a Court of Military Review shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.”

(28) Subsections (b) and (f) of section 867 (article 67) are amended by striking out “board of review” each time it appears and inserting in lieu thereof “Court of Military Review”.

(29) Section 868 (article 68) is amended to read as follows:

“§ 868. Art. 68. Branch offices

“The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Military Review with one or more panels. That Assistant Judge Advocate General and any Court of Military Review established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Military Review established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.”

(30) Section 869 (article 69) is amended by adding the following new sentence at the end thereof: “Notwithstanding section 876 of this title (article 76), the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.”

(31) Subsections (b), (c), and (d) of section 870 (article 70) are amended by striking out “board of review” each time it appears and inserting in lieu thereof “Court of Military Review”.

(32) Section 871 (article 71) is amended—

(A) by striking out “board of review” in subsection (c) and inserting in lieu thereof “Court of Military Review”; and

(B) by inserting “or deferred” in the first sentence of subsection

(d) immediately after “suspended”.

(33) Section 873 (article 73) is amended to read as follows:

“§ 873. Art. 73. Petition for a new trial”

“At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused’s case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(34) Section 936(b) (article 136(b)) is amended by striking out “law officer” and inserting in lieu thereof “military judge”.

SEC. 3. (a) Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code, in any provision of Federal law (other than provisions amended by this Act) or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.

(b) Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review.

SEC. 4. (a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act shall become effective on the first day of the tenth month following the month in which it is enacted.

(b) The amendment made by paragraph (30) of section 2 shall become effective upon the date of enactment of this Act.

(c) The amendment made by paragraph (33) shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment.

Approved October 24, 1968.

Public Law 90-633**AN ACT**

To amend the Immigration and Nationality Act to provide for the naturalization of persons who have served in active-duty service in the Armed Forces of the United States during the Vietnam hostilities, or in other periods of military hostilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440) is amended by inserting after “July 1, 1955,” the following: “or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as of the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force.”

SEC. 2. Section 329(b)(4) of the Immigration and Nationality Act is hereby amended by inserting after “July 1, 1955,” the following: “or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of

70A Stat. 77.

Ante, p. 1336.

Court of Military Review.

Effective dates.

October 24, 1968
[H. R. 15147]

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Armed Forces personnel in combat areas, naturalization.

66 Stat. 250;
75 Stat. 654.