

words “shall be”. The word “may” is substituted for the word “shall”.

## AMENDMENTS

1990—Subsec. (a). Pub. L. 101-510, §541(b), designated existing provision as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101-510, §541(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.”

Subsec. (c). Pub. L. 101-510, §541(d), added subsec. (c). 1968—Subsec. (a). Pub. L. 90-632, §2(17)(A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90-632, §2(17)(C), substituted “military judge” for “law officer”.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-510 applicable only to court-martial convened on or after Nov. 5, 1990, see section 541(e) of Pub. L. 101-510, set out as a note under section 839 of this title.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

## § 842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate 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 or associate defense counsel may be taken at any time by any judge advocate 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 or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(18), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 98-209, §§2(e), 3(f), Dec. 6, 1983, 97 Stat. 1393, 1395.)

## HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
842(a) .....	50:617(a).	May 5, 1950, ch. 169, §1
842(b) .....	50:617(b).	(Art. 42), 64 Stat. 121.

In subsection (a), the word “all” and the word “the” before the words “members”, “trial”, “defense”, and “reporter” are omitted as surplusage.

In subsections (a) and (b), the words “or affirmation” are omitted as covered by the definition of the word “oath” in section 1 of Title 1.

In subsection (b), the words “Each witness” are substituted for the words “All witnesses”.

## AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209 struck out “, law specialist,” after “judge advocate” in two places, substituted “assistant or associate defense counsel” for “assistant defense counsel”.

1968—Subsec. (a). Pub. L. 90-632 struck out requirement that the oath given to court-martial personnel be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

## § 843. Art. 43. Statute of limitations

(a) A person charged with absence without leave or missing movement in time of war, with murder or rape, or with any other offense punishable by death, may be tried and punished at any time without limitation.

(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2)(A) A person charged with having committed a child abuse offense against a child is liable to be tried by court-martial if the sworn charges and specifications are received during the life of the child or within five years after the date on which the offense was committed, whichever provides a longer period, by an officer exercising summary court-martial jurisdiction with respect to that person.

(B) In subparagraph (A), the term “child abuse offense” means an act that involves abuse of a person who has not attained the age of 16 years and constitutes any of the following offenses:

(i) Any offense in violation of section 920 of this title (article 120).

(ii) Maiming in violation of section 924 of this title (article 124).

(iii) Sodomy in violation of section 925 of this title (article 125).

(iv) Aggravated assault or assault consummated by a battery in violation of section 928 of this title (article 128).

(v) Kidnaping;<sup>1</sup> indecent assault;<sup>1</sup> assault with intent to commit murder, voluntary manslaughter, rape, or sodomy, or indecent acts or liberties with a child in violation of section 934 of this title (article 134).

(C) In subparagraph (A), the term “child abuse offense” includes an act that involves abuse of a

<sup>1</sup> So in original. The semicolon probably should be a comma.

person who has not attained the age of 18 years and would constitute an offense under chapter 110 or 117 of title 18 or under section 1591 of that title.

(3) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or speci-

fications (or allege acts or omissions that were included in the dismissed charges or specifications).

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 99-661, div. A, title VIII, §805(a), (b), Nov. 14, 1986, 100 Stat. 3908; Pub. L. 108-136, div. A, title V, §551, Nov. 24, 2003, 117 Stat. 1481; Pub. L. 109-163, div. A, title V, §§552(e), 553, Jan. 6, 2006, 119 Stat. 3263, 3264; Pub. L. 109-364, div. A, title X, §1071(a)(4), Oct. 17, 2006, 120 Stat. 2398.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
843(a) .....	50:618(a).	May 5, 1950, ch. 169, §1 (Art. 43), 64 Stat. 121.
843(b) .....	50:618(b).	
843(c) .....	50:618(c).	
843(d) .....	50:618(d).	
843(e) .....	50:618(e).	
843(f) .....	50:618(f).	

In subsection (b), the word “inclusive” is omitted as surplusage.

In subsections (b) and (c), the words “is not” are substituted for the words “shall not be”.

In subsection (e), the words “For an” are substituted for the words “In the case of any”. The word “is” is substituted for the words “shall be”. The words “Secretary concerned” are substituted for the words “Secretary of the Department”.

In subsection (f), the word “is” is substituted for the words “shall be”.

AMENDMENT OF SUBSECTION (a)

*Pub. L. 109-163, div. A, title V, §552(e), (f), Jan. 6, 2006, 119 Stat. 3263, provided that, effective Oct. 1, 2007, subsection (a) of this section is amended by striking “or rape,” and inserting “, rape, or rape of a child.”*

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163, §553(a), substituted “with murder or rape, or with any other offense punishable by death” for “or with any offense punishable by death”.

Subsec. (b)(2)(A). Pub. L. 109-163, §553(b)(1), substituted “during the life of the child or within five years after the date on which the offense was committed, whichever provides a longer period,” for “before the child attains the age of 25 years”.

Subsec. (b)(2)(B). Pub. L. 109-163, §553(b)(2)(A), struck out “sexual or physical” before “abuse of a person” in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 109-163, §553(b)(2)(B), substituted “Any offense” for “Rape or carnal knowledge”.

Subsec. (b)(2)(B)(iii). Pub. L. 109-364, §1071(a)(4)(A), substituted “125” for “126”.

Subsec. (b)(2)(B)(v). Pub. L. 109-163, §553(b)(2)(C), substituted “Kidnaping; indecent assault;” for “Indecent assault.”

Subsec. (b)(2)(C). Pub. L. 109-364, §1071(a)(4)(B), substituted “under chapter 110 or 117 of title 18 or under section 1591 of that title” for “under chapter 110 or 117, or under section 1591, of title 18”.

Pub. L. 109-163, §553(b)(3), added subpar. (C).

2003—Subsec. (b)(2), (3). Pub. L. 108-136 added par. (2) and redesignated former par. (2) as (3).

1986—Subsecs. (a) to (c). Pub. L. 99-661, §805(a), amended subsecs. (a) to (c) generally. Prior to amendment, subsecs. (a) to (c) read as follows:

“(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

“(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919-932 of this

title (articles 119–132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

“(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).”

Subsec. (g). Pub. L. 99–661, §805(b), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, §552(f), Jan. 6, 2006, 119 Stat. 3263, provided that: “The amendments made by this section [amending this section and sections 918 and 920 of this title and enacting provisions set out as notes under section 920 of this title] shall take effect on October 1, 2007.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(c) of Pub. L. 99–661 provided that: “The amendments made by this section [amending this section] shall apply to an offense committed on or after the date of the enactment of this Act [Nov. 14, 1986].”

**§ 844. Art. 44. Former jeopardy**

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
844(a) .....	50:619(a).	May 5, 1950, ch. 169, §1 (Art. 44), 64 Stat. 122.
844(b) .....	50:619(b).	
844(c) .....	50:619(c).	

In subsection (a), the word “may” is substituted for the word “shall”.

In subsection (b), the word “is” is substituted for the words “shall be held to be”.

In subsection (c), the word “after” is substituted for the words “subsequent to”. The word “before” is substituted for the words “prior to”. The word “is” is substituted for the words “shall be”.

**§ 845. Art. 45. Pleas of the accused**

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(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 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 90–632, §2(19), Oct. 24, 1968, 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
845(a) .....	50:620(a).	May 5, 1950, ch. 169, §1 (Art. 45), 64 Stat. 122.
845(b) .....	50:620(b).	

In subsection (b), the word “may” is substituted for the word “shall”.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, §2(19)(A), substituted “after arraignment” for “arraigned before a court-martial”.

Subsec. (b). Pub. L. 90–632, §2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

**§ 846. Art. 46. Opportunity to obtain witnesses and other evidence**

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Commonwealths and possessions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109–163, div. A, title X, §1057(a)(6), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
846 .....	50:621.	May 5, 1950, ch. 169, §1 (Art. 46), 64 Stat. 122.

The word “Commonwealths” is inserted to reflect the present status of Puerto Rico.

AMENDMENTS

2006—Pub. L. 109–163 substituted “Commonwealths and possessions” for “Territories, Commonwealths, and possessions”.