

may not exceed 85” for “the grade of major general or rear admiral, as the case may be, may not exceed 30”.

Subsec. (d)(2), (3). Pub. L. 109-163, § 504(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “The total number of colonels and Navy captains on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of brigadier general or rear admiral (lower half), as the case may be, may not exceed 55.”

2004—Subsec. (d). Pub. L. 108-375 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

2003—Subsec. (b)(3). Pub. L. 108-136 added par. (3).

1999—Subsec. (d)(1). Pub. L. 106-65 substituted “55.” for “the following:” and struck out subpars. (A) to (C) which read as follows:

“(A) During fiscal years 1996 and 1997, 75.

“(B) During fiscal year 1998, 55.

“(C) After fiscal year 1998, 35.”

1997—Subsec. (d)(2). Pub. L. 105-85 inserted “, or, for the grades of colonel and Navy captain, 2 percent,” after “1 percent”.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title V, § 509(b), Nov. 24, 2003, 117 Stat. 1459, provided that: “Paragraph (3) of subsection (b) of section 777 of title 10, United States Code, as added by subsection (a), shall not apply with respect to the wearing by an officer of insignia for a grade that was authorized under that section before the date of the enactment of this Act [Nov. 24, 2003].”

TEMPORARY VARIATION OF LIMITATIONS ON NUMBERS OF FROCKED OFFICERS

Pub. L. 104-106, div. A, title V, § 503(b), Feb. 10, 1996, 110 Stat. 294, provided that in the administration of former subsec. (d)(2) of this section, the percent limitation applied under that section for fiscal year 1996 would be 2 percent, rather than 1 percent.

§ 777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions

(a) AUTHORITY.—An officer serving in a grade below the grade of lieutenant general or, in the case of the Navy, vice admiral, who has been selected for appointment to the grade of lieutenant general or general, or, in the case of the Navy, vice admiral or admiral, and an officer serving in the grade of lieutenant general or vice admiral who has been selected for appointment to the grade of general or admiral, may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that higher grade for a period of up to 14 days before assuming the duties of a position for which the higher grade is authorized. An officer who is so authorized to wear the insignia of a higher grade is said to be “frocked” to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer has received orders to serve in a position outside the military department of that officer for which that grade is authorized;

(3) the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval author-

ity) has given approval for the officer to wear the insignia for that grade before assuming the duties of a position for which that grade is authorized; and

(4) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of a higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of a higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED.—The total number of officers who are authorized to wear the insignia for a higher grade under this section shall count against the limitation in section 777(d) of this title on the total number of officers authorized to wear the insignia of a higher grade.

(Added Pub. L. 111-383, div. A, title V, § 505(a)(1), Jan. 7, 2011, 124 Stat. 4208.)

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

Table with 3 columns: Subchapter, Sec., Art. Rows include I. General Provisions, II. Apprehension and Restraint, III. Non-Judicial Punishment, IV. Court-Martial Jurisdiction, V. Composition of Courts-Martial, VI. Pre-Trial Procedure, VII. Trial Procedure, VIII. Sentences, IX. Post-Trial Procedure and Review of Courts-Martial, X. Punitive Articles, XI. Miscellaneous Provisions, XII. United States Court of Appeals for the Armed Forces.

AMENDMENTS

1994—Pub. L. 103-337, div. A, title IX, § 924(c)(3)(B), Oct. 5, 1994, 108 Stat. 2832, substituted “United States Court of Appeals for the Armed Forces” for “Court of Military Appeals” in item for subchapter XII.

1989—Pub. L. 101-189, div. A, title XIII, § 1304(a)(1), Nov. 29, 1989, 103 Stat. 1576, added item for subchapter XII.

1983—Pub. L. 98-209, § 5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted “IX. Post-Trial Procedure and Review of Courts-Martial” for “IX. Review of Courts-Martial”.

1958—Pub. L. 85-861, § 33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

SUBCHAPTER I—GENERAL PROVISIONS

Table with 2 columns: Sec., Art. Rows include 801. 1. Definitions, 802. 2. Persons subject to this chapter.

Sec.	Art.	
803.	3.	Jurisdiction to try certain personnel.
804.	4.	Dismissed officer's right to trial by court-martial.
805.	5.	Territorial applicability of this chapter.
806.	6.	Judge advocates and legal officers.
806a.	6a.	Investigation and disposition of matters pertaining to the fitness of military judges.

AMENDMENTS

1989—Pub. L. 101-189, div. A, title XIII, §1304(a)(2), Nov. 29, 1989, 103 Stat. 1576, added item 806a.

§ 801. Article 1. Definitions

In this chapter:

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

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

[(11) Repealed. Pub. L. 109-241, title II, §218(a)(1), July 11, 2006, 120 Stat. 526.]

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term "record", when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term "classified information" means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term "national security" means the national defense and foreign relations of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Pub. L. 89-670, §10(g), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90-179, §1(1), (2), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90-632, §2(1), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98-209, §§2(a), 6(a), Dec. 6, 1983, 97 Stat. 1393, 1400; Pub. L. 100-180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100-456, div. A, title XII, §1233(f)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 104-106, div. A, title XI, §1141(b), Feb. 10, 1996, 110 Stat. 467; Pub. L. 107-296, title XVII, §1704(b)(2), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109-241, title II, §218(a), July 11, 2006, 120 Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
801	50:551 (less (9)).	May 5, 1950, ch. 169, §1 (Art. 1 (less (9))), 64 Stat. 108.

The words "In this chapter" are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word "chapter" is substituted for the word "code".

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words "commissioned officer" are substituted for the word "officer" for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)-(7), and (9)-(12) of the revised section, the word "means" is substituted for the words "shall be construed to refer to" and "shall be construed to refer * * * to".

In clause (1), the words "service in" are substituted for the words "part of" to conform to section 1 of title 14. The words "Department of the Treasury" are substituted for the words "Treasury Department".

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words "the United States Air Force Academy" are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word "refers" is substituted for the words "shall be construed to refer".

In clause (12), the words "Marine Corps" are inserted to make explicit that the clause applies to the Marine Corps. The word "commissioned" is inserted for clarity.

AMENDMENTS

2006—Cl. (11). Pub. L. 109-241, §218(a)(1), struck out cl. (11) which read as follows: "The term 'law specialist'

means a commissioned officer of the Coast Guard designated for special duty (law).”

Cl. (13)(C). Pub. L. 109-241, §218(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: “an officer of the Coast Guard who is designated as a law specialist.”

2002—Cl. (1). Pub. L. 107-296 substituted “an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security” for “the General Counsel of the Department of Transportation”.

1996—Cls. (15), (16). Pub. L. 104-106 added cls. (15) and (16).

1988—Cl. (1). Pub. L. 100-456 substituted “term ‘Judge’ for “term ‘judge”.

1987—Cls. (1), (3) to (14). Pub. L. 100-180 inserted “The term” after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983—Cl. (13). Pub. L. 98-209, §2(a), added officers of the Coast Guard who are designated as law specialists to definition of “Judge Advocate”.

Cl. (14). Pub. L. 98-209, §6(a), added cl. (14).

1968—Cl. (10). Pub. L. 90-632 substituted “military judge” for “law officer” as term being defined and inserted reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90-179, §1(1), struck out “Navy or” before “Coast Guard”.

Cl. (13). Pub. L. 90-179, §1(2), added cl. (13).

1966—Pub. L. 89-670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of “Judge Advocate General” applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-209, §12(a), Dec. 6, 1983, 97 Stat. 1407, provided that:

“(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

“(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

“(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

“(4) The amendments made by sections 5, 6, and 7 [amending this section and sections 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and

with the same effect as if such amendments had not been enacted.

“(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.”

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-632, §4, Oct. 24, 1968, 82 Stat. 1343, provided that:

“(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [October 1968].

“(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

“(c) The amendment made by paragraph (33) [amending section 873 of this title] 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 [Oct. 24, 1968].”

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89-670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE

Act Aug. 10, 1956, ch. 1041, §51, 70A Stat. 640, provided that: “Chapter 47 of title 10, United States Code, enacted by section 1 of this Act, takes effect January 1, 1957.”

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title XI, §1101, Feb. 10, 1996, 110 Stat. 461, provided that: “This title [enacting sections 857a, 858b, and 876b of this title, amending this section and sections 802, 832, 847, 857, 860, 862, 866, 895, 920, and 937 of this title, repealing section 804 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 802, 857, 858b, and 876b of this title, and amending provisions set out as a note under section 942 of this title] may be cited as the ‘Military Justice Amendments of 1995’.”

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: “This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the ‘Military Justice Amendments of 1986’.”

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-209, §1(a), Dec. 6, 1983, 97 Stat. 1393, provided that: “This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title, and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the ‘Military Justice Act of 1983’.”

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-81, §1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: “This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838,

867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the ‘Military Justice Amendments of 1981’.”

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90-632, §1, Oct. 24, 1968, 82 Stat. 1335, provided: “That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the ‘Military Justice Act of 1968’.”

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90-179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties, and proceedings not affected by Pub. L. 90-179 establishing Judge Advocate General’s Corps in Navy, see section 10 of Pub. L. 90-179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Act Aug. 10, 1956, ch. 1041, §49(e), 70A Stat. 640, provided that: “In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NOTICE TO CONGRESS ON USE OF NAVAL VESSELS FOR DETENTION OF INDIVIDUALS

Pub. L. 112-239, div. A, title X, §1024(a), Jan. 2, 2013, 126 Stat. 1912, provided that: “Not later than 30 days after first detaining an individual pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) on a naval vessel outside the United States, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of the detention. In the case of such an individual who is transferred or released before the submittal of the notice of the individual’s detention, the Secretary shall also submit to such Committees notice of the transfer or release.”

NOTICE REQUIRED PRIOR TO TRANSFER OF CERTAIN INDIVIDUALS DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN

Pub. L. 112-239, div. A, title X, §1025, Jan. 2, 2013, 126 Stat. 1913, provided that:

“(a) NOTICE REQUIRED.—The Secretary of Defense shall submit to the appropriate congressional committees notice in writing of the proposed transfer of any individual detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) who is a national of a country other than the United States or Afghanistan from detention at the Detention Facility at Parwan, Afghanistan, to the custody of the Government of Afghanistan or of any other country. Such notice shall be provided not later than 10 days before such a transfer may take place.

“(b) ASSESSMENTS REQUIRED.—Prior to any transfer referred to under subsection (a), the Secretary shall ensure that an assessment is conducted as follows:

“(1) In the case of the proposed transfer of such an individual by reason of the individual being released, an assessment of the threat posed by the individual and the security environment of the country to which the individual is to be transferred.

“(2) In the case of the proposed transfer of such an individual to a country other than Afghanistan for the purpose of the prosecution of the individual, an assessment regarding the capacity, willingness, and historical track record of the country with respect to prosecuting similar cases, including a review of the primary evidence against the individual to be transferred and any significant admissibility issues regarding such evidence that are expected to arise in connection with the prosecution of the individual.

“(3) In the case of the proposed transfer of such an individual for reintegration or rehabilitation in a country other than Afghanistan, an assessment regarding the capacity, willingness, and historical track records of the country for reintegrating or rehabilitating similar individuals.

“(4) In the case of the proposed transfer of such an individual to the custody of the Government of Afghanistan for prosecution or detention, an assessment regarding the capacity, willingness, and historical track record of Afghanistan to prosecute or detain long-term such individuals.

“(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ‘appropriate congressional committees’ means the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate.”

REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES

Pub. L. 112-239, div. A, title X, §1028, Jan. 2, 2013, 126 Stat. 1914, provided that:

“(a) CERTIFICATION REQUIRED PRIOR TO TRANSFER.—

“(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense for fiscal year 2013 to transfer any individual detained at Guantanamo to the custody or control of the individual’s country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

“(b) CERTIFICATION.—A certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that—

“(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred—

“(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

“(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

“(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

“(D) has taken or agreed to take effective actions to ensure that the individual cannot take action to

threaten the United States, its citizens, or its allies in the future;

“(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or re-engage in any terrorist activity; and

“(F) has agreed to share with the United States any information that—

“(i) is related to the individual or any associates of the individual; and

“(ii) could affect the security of the United States, its citizens, or its allies; and

“(2) included an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary’s certifications.

“(C) PROHIBITION IN CASES OF PRIOR CONFIRMED RECIDIVISM.—

“(1) PROHIBITION.—Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual’s country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

“(d) NATIONAL SECURITY WAIVER.—

“(1) IN GENERAL.—The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by subsection (b) for transfers prohibited by (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that—

“(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

“(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

“(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

“(D) the transfer is in the national security interests of the United States.

“(2) REPORTS.—Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

“(A) A copy of the determination and the waiver concerned.

“(B) A statement of the basis for the determination, including—

“(i) an explanation why the transfer is in the national security interests of the United States;

“(ii) in the case of a waiver of [sub]paragraph (D) or (E) of subsection (b)(1), an explanation why

it is not possible to certify that the risks addressed in the [sub]paragraph to be waived have been completely eliminated; and

“(iii) a classified summary of—

“(I) the individual’s record of cooperation while in the custody of or under the effective control of the Department of Defense; and

“(II) the agreements and mechanisms in place to provide for continuing cooperation.

“(C) A summary of the alternative actions to be taken to address the underlying purpose of, and to mitigate the risks addressed in, the [sub]paragraph or subsection to be waived.

“(D) The assessment required by subsection (b)(2).

“(e) RECORD OF COOPERATION.—In assessing the risk that an individual detained at Guantanamo will engage in terrorist activity or other actions that could affect the security of the United States if released for the purpose of making a certification under subsection (b) or a waiver under subsection (d), the Secretary of Defense may give favorable consideration to any such individual—

“(1) who has substantially cooperated with United States intelligence and law enforcement authorities, pursuant to a pre-trial agreement, while in the custody of or under the effective control of the Department of Defense; and

“(2) for whom agreements and effective mechanisms are in place, to the extent relevant and necessary, to provide for continued cooperation with United States intelligence and law enforcement authorities.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

“(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) The term ‘individual detained at Guantanamo’ means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

“(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

“(B) is—

“(i) in the custody or under the control of the Department of Defense; or

“(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

“(3) The term ‘foreign terrorist organization’ means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).”

RIGHTS UNAFFECTED

Pub. L. 112-239, div. A, title X, §1029, Jan. 2, 2013, 126 Stat. 1917, provided that: “Nothing in the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81 [see Tables for classification]) shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.”

NOTIFICATION OF TRANSFER OF A DETAINEE HELD AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA

Pub. L. 112-87, title III, §308, Jan. 3, 2012, 125 Stat. 1883, provided that:

“(a) REQUIREMENT FOR NOTIFICATION.—The President shall submit to Congress, in classified form, at least 30

days prior to the transfer or release of an individual detained at Naval Station, Guantanamo Bay, Cuba, as of June 24, 2009, to the country of such individual's nationality or last habitual residence or to any other foreign country or to a freely associated State the following information:

“(1) The name of the individual to be transferred or released.

“(2) The country or the freely associated State to which such individual is to be transferred or released.

“(3) The terms of any agreement with the country or the freely associated State for the acceptance of such individual, including the amount of any financial assistance related to such agreement.

“(4) The agencies or departments of the United States responsible for ensuring that the agreement described in paragraph (3) is carried out.

“(b) DEFINITION.—In this section, the term ‘freely associated States’ means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

“(c) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this section shall be construed to supersede or otherwise affect the following provisions of law:

“(1) Section 1028 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112-81, set out below].

“(2) Section 8120 of the Department of Defense Appropriations Act, 2012 [div. A of Pub. L. 112-74, 125 Stat. 833].”

[Memorandum of President of the United States, Jan. 27, 2012, 77 F.R. 11371, delegated to the Secretary of State, in consultation with the Secretary of Defense, the function to provide to Congress the information specified in section 308(a) of Pub. L. 112-87, set out above.]

DETENTION AUTHORITY AND PROCEDURES, TRANSFER CERTIFICATIONS AND PROSECUTION CONSULTATION REQUIREMENT

Pub. L. 112-81, div. A, title X, §§1021-1025, 1028, 1029, Dec. 31, 2011, 125 Stat. 1562-1565, 1567, 1569, provided that:

“SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

“(a) IN GENERAL.—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

“(b) COVERED PERSONS.—A covered person under this section is any person as follows:

“(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

“(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

“(c) DISPOSITION UNDER LAW OF WAR.—The disposition of a person under the law of war as described in subsection (a) may include the following:

“(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

“(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111-84)).

“(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

“(4) Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.

“(d) CONSTRUCTION.—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

“(e) AUTHORITIES.—Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

“(f) REQUIREMENT FOR BRIEFINGS OF CONGRESS.—The Secretary of Defense shall regularly brief Congress regarding the application of the authority described in this section, including the organizations, entities, and individuals considered to be ‘covered persons’ for purposes of subsection (b)(2).

“SEC. 1022. MILITARY CUSTODY FOR FOREIGN AL-QAEDA TERRORISTS.

“(a) CUSTODY PENDING DISPOSITION UNDER LAW OF WAR.—

“(1) IN GENERAL.—Except as provided in paragraph (4), the Armed Forces of the United States shall hold a person described in paragraph (2) who is captured in the course of hostilities authorized by the Authorization for Use of Military Force (Public Law 107-40) in military custody pending disposition under the law of war.

“(2) COVERED PERSONS.—The requirement in paragraph (1) shall apply to any person whose detention is authorized under section 1021 who is determined—

“(A) to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and

“(B) to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

“(3) DISPOSITION UNDER LAW OF WAR.—For purposes of this subsection, the disposition of a person under the law of war has the meaning given in section 1021(c), except that no transfer otherwise described in paragraph (4) of that section shall be made unless consistent with the requirements of section 1028.

“(4) WAIVER FOR NATIONAL SECURITY.—The President may waive the requirement of paragraph (1) if the President submits to Congress a certification in writing that such a waiver is in the national security interests of the United States.

“(b) APPLICABILITY TO UNITED STATES CITIZENS AND LAWFUL RESIDENT ALIENS.—

“(1) UNITED STATES CITIZENS.—The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

“(2) LAWFUL RESIDENT ALIENS.—The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

“(c) IMPLEMENTATION PROCEDURES.—

“(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 31, 2011], the President shall issue, and submit to Congress, procedures for implementing this section.

“(2) ELEMENTS.—The procedures for implementing this section shall include, but not be limited to, procedures as follows:

“(A) Procedures designating the persons authorized to make determinations under subsection (a)(2) and the process by which such determinations are to be made.

“(B) Procedures providing that the requirement for military custody under subsection (a)(1) does not require the interruption of ongoing surveillance or intelligence gathering with regard to persons not already in the custody or control of the United States.

“(C) Procedures providing that a determination under subsection (a)(2) is not required to be imple-

mented until after the conclusion of an interrogation which is ongoing at the time the determination is made and does not require the interruption of any such ongoing interrogation.

“(D) Procedures providing that the requirement for military custody under subsection (a)(1) does not apply when intelligence, law enforcement, or other Government officials of the United States are granted access to an individual who remains in the custody of a third country.

“(E) Procedures providing that a certification of national security interests under subsection (a)(4) may be granted for the purpose of transferring a covered person from a third country if such a transfer is in the interest of the United States and could not otherwise be accomplished.

“(d) AUTHORITIES.—Nothing in this section shall be construed to affect the existing criminal enforcement and national security authorities of the Federal Bureau of Investigation or any other domestic law enforcement agency with regard to a covered person, regardless whether such covered person is held in military custody.

“(e) EFFECTIVE DATE.—This section shall take effect on the date that is 60 days after the date of the enactment of this Act, and shall apply with respect to persons described in subsection (a)(2) who are taken into the custody or brought under the control of the United States on or after that effective date.

“SEC. 1023. PROCEDURES FOR PERIODIC DETENTION REVIEW OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

“(a) PROCEDURES REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth procedures for implementing the periodic review process required by Executive Order No. 13567 [set out below] for individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note).

“(b) COVERED MATTERS.—The procedures submitted under subsection (a) shall, at a minimum—

“(1) clarify that the purpose of the periodic review process is not to determine the legality of any detainee’s law of war detention, but to make discretionary determinations whether or not a detainee represents a continuing threat to the security of the United States;

“(2) clarify that the Secretary of Defense is responsible for any final decision to release or transfer an individual detained in military custody at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Executive Order referred to in subsection (a), and that in making such a final decision, the Secretary shall consider the recommendation of a periodic review board or review committee established pursuant to such Executive Order, but shall not be bound by any such recommendation;

“(3) clarify that the periodic review process applies to any individual who is detained as an unprivileged enemy belligerent at United States Naval Station, Guantanamo Bay, Cuba, at any time; and

“(4) ensure that appropriate consideration is given to factors addressing the need for continued detention of the detainee, including—

“(A) the likelihood the detainee will resume terrorist activity if transferred or released;

“(B) the likelihood the detainee will reestablish ties with al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners if transferred or released;

“(C) the likelihood of family, tribal, or government rehabilitation or support for the detainee if transferred or released;

“(D) the likelihood the detainee may be subject to trial by military commission; and

“(E) any law enforcement interest in the detainee.

“(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

“SEC. 1024. PROCEDURES FOR STATUS DETERMINATIONS.

“(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall submit to the appropriate committees of Congress a report setting forth the procedures for determining the status of persons detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) for purposes of section 1021.

“(b) ELEMENTS OF PROCEDURES.—The procedures required by this section shall provide for the following in the case of any unprivileged enemy belligerent who will be held in long-term detention under the law of war pursuant to the Authorization for Use of Military Force:

“(1) A military judge shall preside at proceedings for the determination of status of an unprivileged enemy belligerent.

“(2) An unprivileged enemy belligerent may, at the election of the belligerent, be represented by military counsel at proceedings for the determination of status of the belligerent.

“(c) APPLICABILITY.—The Secretary of Defense is not required to apply the procedures required by this section in the case of a person for whom habeas corpus review is available in a Federal court.

“(d) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the appropriate committees of Congress a report on any modification of the procedures submitted under this section. The report on any such modification shall be so submitted not later than 60 days before the date on which such modification goes into effect.

“(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

“(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

“SEC. 1025. REQUIREMENT FOR NATIONAL SECURITY PROTOCOLS GOVERNING DETAINEE COMMUNICATIONS.

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall develop and submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a national security protocol governing communications to and from individuals detained at United States Naval Station, Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note), and related issues.

“(b) CONTENTS.—The protocol developed pursuant to subsection (a) shall include Department of Defense policies and procedures regarding each of the following:

“(1) Detainee access to military or civilian legal representation, or both, including any limitations on such access and the manner in which any applicable legal privileges will be balanced with national security considerations.

“(2) Detainee communications with persons other than Federal Government personnel and members of the Armed Forces, including meetings, mail, phone calls, and video teleconferences, including—

“(A) any limitations on categories of information that may be discussed or materials that may be shared; and

“(B) the process by which such communications or materials are to be monitored or reviewed.

“(3) The extent to which detainees may receive visits by persons other than military or civilian representatives.

“(4) The measures planned to be taken to implement and enforce the provisions of the protocol.

“(c) UPDATES.—The Secretary of Defense shall notify the congressional defense committees of any significant change to the policies and procedures described in the protocol submitted pursuant to subsection (a) not later than 30 days after such change is made.

“(d) FORM OF PROTOCOL.—The protocol submitted pursuant to subsection (a) may be submitted in classified form.

“SEC. 1028. REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES.

“(a) CERTIFICATION REQUIRED PRIOR TO TRANSFER.—

“(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense for fiscal year 2012 to transfer any individual detained at Guantanamo to the custody or control of the individual’s country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate—

“(A) an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance); or

“(B) a pre-trial agreement entered in a military commission case prior to the date of the enactment of this Act [Dec. 31, 2011].

“(b) CERTIFICATION.—A certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that—

“(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred—

“(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

“(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

“(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

“(D) has taken or agreed to take effective actions to ensure that the individual cannot take action to threaten the United States, its citizens, or its allies in the future;

“(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or re-engage in any terrorist activity; and

“(F) has agreed to share with the United States any information that—

“(i) is related to the individual or any associates of the individual; and

“(ii) could affect the security of the United States, its citizens, or its allies; and

“(2) includes an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary’s certifications.

“(c) PROHIBITION IN CASES OF PRIOR CONFIRMED RECIDIVISM.—

“(1) PROHIBITION.—Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual’s country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate—

“(A) an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance); or

“(B) a pre-trial agreement entered in a military commission case prior to the date of the enactment of this Act.

“(d) NATIONAL SECURITY WAIVER.—

“(1) IN GENERAL.—The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by subsection (b) for transfers prohibited by subsection (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that—

“(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

“(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

“(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

“(D) the transfer is in the national security interests of the United States.

“(2) REPORTS.—Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

“(A) A copy of the determination and the waiver concerned.

“(B) A statement of the basis for the determination, including—

“(i) an explanation why the transfer is in the national security interests of the United States; and

“(ii) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), an explanation why it is not possible to certify that the risks addressed in the subparagraph to be waived have been completely eliminated.

“(C) A summary of the alternative actions to be taken to address the underlying purpose of, and to mitigate the risks addressed in, the subparagraph or subsection to be waived.

“(D) The assessment required by subsection (b)(2).

“(e) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

“(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) The term ‘individual detained at Guantanamo’ means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

“(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

“(B) is—

“(i) in the custody or under the control of the Department of Defense; or

“(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

“(3) The term ‘foreign terrorist organization’ means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

“(f) REPEAL OF SUPERSEDED AUTHORITY.—[Repealed section 1033 of Pub. L. 111-383, 124 Stat. 4351].

“SEC. 1029. REQUIREMENT FOR CONSULTATION REGARDING PROSECUTION OF TERRORISTS.

“(a) IN GENERAL.—Before seeking an indictment of, or otherwise charging, an individual described in subsection (b) in a Federal court, the Attorney General shall consult with the Director of National Intelligence and the Secretary of Defense about—

“(1) whether the more appropriate forum for prosecution would be a Federal court or a military commission; and

“(2) whether the individual should be held in civilian custody or military custody pending prosecution.

“(b) APPLICABILITY.—The consultation requirement in subsection (a) applies to—

“(1) a person who is subject to the requirements of section 1022, in accordance with a determination made pursuant to subsection (a)(2) of such section; and

“(2) any other person who is held in military detention outside of the United States pursuant to the authority affirmed by section 1021.”

[Memorandum of President of the United States, Feb. 28, 2012, 77 F.R. 12435, delegated the waiver authority conferred upon the President by section 1022(a)(4) of Pub. L. 112-81, set out above, to the Attorney General, in consultation with other senior national security officials, including the Secretaries of State, Defense, and Homeland Security, Director of National Intelligence, Chairman of the Joint Chiefs of Staff, Director of the Central Intelligence Agency, and Director of the Federal Bureau of Investigation, as well as any other officials the President may designate.]

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL

Pub. L. 111-84, div. A, title X, §1038, Oct. 28, 2009, 123 Stat. 2451, provided that:

“(a) PROHIBITION.—Except as provided in subsection (b), effective one year after the date of the enactment of this Act [Oct. 28, 2009], no enemy prisoner of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility in connection with hostilities may be interrogated by contractor personnel.

“(b) AUTHORIZED FUNCTIONS OF CONTRACTOR PERSONNEL.—Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of persons as described in subsection (a) if—

“(1) such personnel are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government

personnel in such positions in such interrogations; and

“(2) appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor’s performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

“(c) DISCHARGE BY GOVERNMENT PERSONNEL.—The Secretary of Defense shall take appropriate actions to ensure that, by not later than one year after the date of the enactment of this Act, the Department of Defense has the resources needed to ensure that interrogations described in subsection (a) are conducted by appropriately qualified government personnel.

“(d) WAIVER.—

“(1) WAIVERS AUTHORIZED.—The Secretary of Defense may waive the prohibition under subsection (a) for a period of 60 days if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States.

“(2) LIMITATION ON DELEGATION.—

“(A) IN GENERAL.—The waiver authority under paragraph (1) may not be delegated to any official below the level of the Deputy Secretary of Defense, except in the case of a waiver for an individual interrogation that is based on military exigencies, in which case the delegation of the waiver authority shall be done pursuant to regulations that the Secretary of Defense shall prescribe but in no instance may the latter delegation be below the level of combatant commander of the theater in which the individual is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility within that theater.

“(B) DEADLINE FOR REGULATIONS.—The Secretary of Defense shall prescribe the regulations referred to in subparagraph (A) by not later than 30 days after the date of the enactment of this Act.

“(3) CONGRESSIONAL NOTIFICATION.—Not later than five days after the Secretary issues a waiver pursuant to paragraph (1), the Secretary shall submit to Congress written notification of the waiver.”

NO MIRANDA WARNINGS FOR AL QAEDA TERRORISTS

Pub. L. 111-84, div. A, title X, §1040, Oct. 28, 2009, 123 Stat. 2454, provided that:

“(a) NO MIRANDA WARNINGS.—

“(1) IN GENERAL.—Absent a court order requiring the reading of such statements, no member of the Armed Forces and no official or employee of the Department of Defense or a component of the intelligence community (other than the Department of Justice) may read to a foreign national who is captured or detained outside the United States as an enemy belligerent and is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility the statement required by *Miranda v. Arizona* (384 U.S. 436 (1966)), or otherwise inform such an individual of any rights that the individual may or may not have to counsel or to remain silent consistent with *Miranda v. Arizona* (384 U.S. 436 (1966)).

“(2) NONAPPLICABILITY TO DEPARTMENT OF JUSTICE.—This subsection shall not apply to the Department of Justice.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘foreign national’ means an individual who is not a citizen or national of the United States.

“(B) The term ‘enemy belligerent’ includes a privileged belligerent against the United States and an unprivileged enemy belligerent, as those terms are defined in section 948a of title 10, United States Code, as amended by section 1802 of this Act.

“(b) REPORT REQUIRED ON NOTIFICATION OF DETAINEES OF RIGHTS UNDER *MIRANDA* v. *ARIZONA*.—Not later than

90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on how the reading of rights under *Miranda v. Arizona* (384 U.S. 436 (1966)) to individuals detained by the United States in Afghanistan may affect—

- “(1) the tactical questioning of detainees at the point of capture by United States Armed Forces deployed in support of Operation Enduring Freedom;
- “(2) post-capture theater-level interrogations and intelligence-gathering activities conducted as part of Operation Enduring Freedom;
- “(3) the overall counterinsurgency strategy and objectives of the United States for Operation Enduring Freedom;
- “(4) United States military operations and objectives in Afghanistan; and
- “(5) potential risks to members of the Armed Forces operating in Afghanistan.”

REQUIREMENT FOR VIDEOTAPING OR OTHERWISE ELECTRONICALLY RECORDING STRATEGIC INTELLIGENCE INTERROGATIONS OF PERSONS IN THE CUSTODY OF OR UNDER THE EFFECTIVE CONTROL OF THE DEPARTMENT OF DEFENSE

Pub. L. 111-84, div. A, title X, § 1080, Oct. 28, 2009, 123 Stat. 2479, as amended by Pub. L. 111-383, div. A, title X, § 1075(d)(15), Jan. 7, 2011, 124 Stat. 4373, provided that:

“(a) **VIDEOTAPING OR OTHER ELECTRONIC RECORDING REQUIRED.**—In accordance with the Army Field Manual on Human Intelligence Collector Operations (FM 2-22.3, September 2006), or any successor thereto, and the guidelines developed pursuant to subsection (f), the Secretary of Defense shall ensure that each strategic intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility is videotaped or otherwise electronically recorded.

“(b) **CLASSIFICATION OF INFORMATION.**—To protect United States national security, the safety of the individuals conducting or assisting in the conduct of a strategic intelligence interrogation, and the privacy of persons described in subsection (a), the Secretary of Defense shall provide for the appropriate classification of videotapes or other electronic recordings made pursuant to subsection (a). The use of such classified videotapes or other electronic recordings in proceedings conducted under the Detainee Treatment Act of 2005 (title XIV of Public Law 109-163 and title X of Public Law 109-148), chapter 47A of title 10, United States Code, as amended by section 1802 of this Act, or at any other judicial or administrative forum under any other provision of law shall be governed by applicable rules, regulations, and laws that protect classified information.

“(c) **STRATEGIC INTELLIGENCE INTERROGATION DEFINED.**—For purposes of this section, the term ‘strategic intelligence interrogation’ means an interrogation of a person described in subsection (a) conducted at a theater-level detention facility.

“(d) **EXCLUSION.**—Nothing in this section shall be construed as requiring—

- “(1) any member of the Armed Forces engaged in direct combat operations to videotape or otherwise electronically record an interrogation of a person described in subsection (a); or
- “(2) the videotaping of or otherwise electronically recording of tactical questioning, as such term is defined in the Army Field Manual on Human Intelligence Collector Operations (FM 2-22.3, September 2006), or any successor thereto.

“(e) **WAIVER.**—

- “(1) **WAIVERS AUTHORIZED.**—The Secretary of Defense may, as an exceptional measure, as part of a specific interrogation plan for a specific person described in subsection (a), waive the requirement in that subsection on a case-by-case basis for a period not to exceed 30 days, if the Secretary—

“(A) makes a determination in writing that such a waiver is necessary to the national security interests of the United States; and

“(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

“(2) **SUSPENSIONS AUTHORIZED.**—The Secretary may temporarily suspend the requirement under subsection (a) at a specific theater-level detention facility for a period not to exceed 30 days, if the Secretary—

“(A) makes a determination in writing that such a suspension is vital to the national security interests of the United States; and

“(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

“(3) **LIMITATION ON DELEGATION OF AUTHORITY.**—This authority of the Secretary under this subsection may only be delegated as follows:

“(A) In the case of the authority under paragraph (1), such authority may not be delegated below the level of the combatant commander of the theater in which the detention facility holding the person is located.

“(B) In the case of the authority under paragraph (2), such authority may not be delegated below the level of the Deputy Secretary of Defense.

“(4) **EXTENSIONS.**—The Secretary may extend a waiver under paragraph (1) for one additional 30-day period, or a suspension under paragraph (2) for one additional 30-day period, if—

“(A) the Secretary—

“(i) in the case of such a waiver, makes a determination in writing that such an extension is necessary to the national security interests of the United State [sic]; or

“(ii) in the case of such a suspension, makes a determination in writing that such an extension is vital to the national security interests of the United States; and

“(B) by not later than five days after the date on which such a determination is made, the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

“(f) **GUIDELINES.**—

“(1) **DEVELOPMENT OF GUIDELINES.**—The Secretary of Defense, acting through the Judge Advocates General (as defined in section 801(1) of title 10, United States Code, (Article 1 of the Uniform Code of Military Justice)), shall develop and adopt uniform guidelines for videotaping or otherwise electronically recording strategic intelligence interrogations as required under subsection (a). Such guidelines shall, at a minimum—

“(A) promote full compliance with the laws of the United States;

“(B) promote the exploitation of intelligence;

“(C) address the retention, maintenance, and disposition of videotapes or other electronic recordings, consistent with subparagraphs (A) and (B) and with the interests of justice; and

“(D) ensure the safety of all participants in the interrogations.

“(2) **SUBMITTAL TO CONGRESS.**—Not later than 30 days after the date of the enactment of this section

[Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the guidelines developed under paragraph (1). Such report shall be in an unclassified form but may include a classified annex.”

REPORTS ON GUANTANAMO BAY PRISONER POPULATION

Pub. L. 111-32, title III, §319, June 24, 2009, 123 Stat. 1874, provided that:

“(a) **REPORTS REQUIRED.**—Not later than 60 days after the date of the enactment of this Act [June 24, 2009] and every 90 days thereafter, the President shall submit to the members and committees of Congress specified in subsection (b) a report on the prisoner population at the detention facility at Naval Station Guantanamo Bay, Cuba.

“(b) **SPECIFIED MEMBERS AND COMMITTEES OF CONGRESS.**—The members and committees of Congress specified in this subsection are the following:

“(1) The majority leader and minority leader of the Senate.

“(2) The Chairman and Ranking Member on the Committee on Armed Services of the Senate.

“(3) The Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate.

“(4) The Chairman and Vice Chairman of the Committee on Appropriations of the Senate.

“(5) The Speaker of the House of Representatives.

“(6) The minority leader of the House of Representatives.

“(7) The Chairman and Ranking Member on the Committee on Armed Services of the House of Representatives.

“(8) The Chairman and Vice Chairman of the Permanent Select Committee on Intelligence of the House of Representatives.

“(9) The Chairman and Ranking Member of the Committee on Appropriations of the House of Representatives.

“(c) **MATTERS TO BE INCLUDED.**—Each report submitted under subsection (a) shall include the following:

“(1) The name and country of origin of each detainee at the detention facility at Naval Station Guantanamo Bay, Cuba, as of the date of such report.

“(2) A current summary of the evidence, intelligence, and information used to justify the detention of each detainee listed under paragraph (1) at Naval Station Guantanamo Bay.

“(3) A current accounting of all the measures taken to transfer each detainee listed under paragraph (1) to the individual’s country of citizenship or another country.

“(4) A current description of the number of individuals released or transferred from detention at Naval Station Guantanamo Bay who are confirmed or suspected of returning to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

“(5) An assessment of any efforts by al Qaeda to recruit detainees released from detention at Naval Station Guantanamo Bay.

“(d) **ADDITIONAL MATTERS TO BE INCLUDED IN INITIAL REPORT.**—The first report submitted under subsection (a) shall also include the following:

“(1) A description of the process that was previously used for screening the detainees described by subsection (c)(4) prior to their release or transfer from detention at Naval Station Guantanamo Bay, Cuba.

“(2) An assessment of the adequacy of that screening process for reducing the risk that detainees previously released or transferred from Naval Station Guantanamo Bay would return to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

“(3) An assessment of lessons learned from previous releases and transfers of individuals who returned to terrorist activities for reducing the risk that detainees released or transferred from Naval Station Guan-

tanamo Bay will return to terrorist activities after their release or transfer.”

[Memorandum of President of the United States, July 17, 2009, 74 F.R. 35765, provided that the reporting function conferred upon the President by section 319(a), (c)(1) to (3) of Pub. L. 111-32, set out above, is assigned to the Attorney General, and the reporting function specified in section 319(a), (c)(4), (5), (d) of Pub. L. 111-32 is assigned to the Director of National Intelligence, in consultation with the Secretary of Defense.]

POLICY ON ROLE OF MILITARY MEDICAL AND BEHAVIORAL SCIENCE PERSONNEL IN INTERROGATION OF DETAINEES

Pub. L. 109-163, div. A, title VII, §750, Jan. 6, 2006, 119 Stat. 3364, provided that:

“(a) **POLICY REQUIRED.**—The Secretary of Defense shall establish the policy of the Department of Defense on the role of military medical and behavioral science personnel in the interrogation of persons detained by the Armed Forces. The policy shall apply uniformly throughout the Armed Forces.

“(b) **REPORT.**—Not later than March 1, 2006, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the policy established under subsection (a). The report shall set forth the policy, and shall include such additional matters on the policy as the Secretary considers appropriate.”

DETAINEE INTERROGATION, STATUS REVIEW, AND TREATMENT

Pub. L. 109-163, div. A, title XIV, §§1402, 1405, 1406, Jan. 6, 2006, 119 Stat. 3475, 3476, 3479, as amended by Pub. L. 111-84, div. A, title XVIII, §1803(b)(2), as added Pub. L. 111-383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

“SEC. 1402. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

“(a) **IN GENERAL.**—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

“(b) **APPLICABILITY.**—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

“(c) **CONSTRUCTION.**—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

“SEC. 1405. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

“(a) **SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

“(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

“(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens

detained in the custody or under the physical control of the Department of Defense in those countries.

“(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the ‘Designated Civilian Official’) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

“(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

“(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

“(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

“(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

“(B) the probative value, if any, of any such statement.

“(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Jan. 6, 2006].

“(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

“(d) ANNUAL REPORT.—

“(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

“(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

“(A) The number of detainees whose status was reviewed.

“(B) The procedures used at each location.

“(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

“(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

“(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

“(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

“(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

“(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

“(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

“(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

“(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

“(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

“(D) TERMINATION ON RELEASE FROM CUSTODY.—

The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

“[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, §1803(b)(2), as added Pub. L. 111–383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

“(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

“(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

“(g) UNITED STATES DEFINED.—For purposes of this section, the term ‘United States’, when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

“(h) EFFECTIVE DATE.—

“(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Jan. 6, 2006].

“(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

“SEC. 1406. TRAINING OF IRAQI SECURITY FORCES REGARDING TREATMENT OF DETAINEES.

“(a) REQUIRED POLICIES.—

“(1) IN GENERAL.—The Secretary of Defense shall prescribe policies designed to ensure that all military and civilian Department of Defense personnel or contractor personnel of the Department of Defense responsible for the training of any unit of the Iraqi Security Forces provide training to such units regarding the international obligations and laws applicable to the humane treatment of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

“(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment that such training has been provided.

“(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006].

“(b) ARMY FIELD MANUAL.—

“(1) TRANSLATION.—The Secretary of Defense shall provide for the unclassified portions of the United

States Army Field Manual on Intelligence Interrogation to be translated into Arabic and any other language the Secretary determines appropriate for use by members of the Iraqi security forces.

“(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be distributed to all appropriate officials of the Iraqi Government, including, but not limited to, the Iraqi Minister of Defense, the Iraqi Minister of Interior, senior Iraqi military personnel, and appropriate members of the Iraqi Security Forces with a recommendation that the principles that underlay the manual be adopted by the Iraqis as the basis for their policies on interrogation of detainees.

“(c) TRANSMITTAL TO CONGRESSIONAL COMMITTEES.—Not less than 30 days after the date on which policies are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

“(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Jan. 6, 2006], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.”

Pub. L. 109-148, div. A, title X, §§ 1002, 1005, 1006, Dec. 30, 2005, 119 Stat. 2739, 2740, 2744, as amended by Pub. L. 109-366, §§ 9, 10, Oct. 17, 2006, 120 Stat. 2636, 2637; Pub. L. 110-181, div. A, title X, § 1063(d)(2), Jan. 28, 2008, 122 Stat. 323; Pub. L. 111-84, div. A, title XVIII, § 1803(b)(1), formerly § 1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered § 1803(b)(1) by Pub. L. 111-383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

“SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

“(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

“(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

“(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

“SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

“(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

“(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

“(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens

detained in the custody or under the physical control of the Department of Defense in those countries.

“(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the ‘Designated Civilian Official’) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

“(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

“(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

“(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

“(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

“(B) the probative value (if any) of any such statement.

“(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Dec. 30, 2005].

“(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

“(d) ANNUAL REPORT.—

“(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

“(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

“(A) The number of detainees whose status was reviewed.

“(B) The procedures used at each location.

“(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

“(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

“(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

“(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

“(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

“(i) who is, at the time a request for review by such court is filed, detained by the United States; and

“(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

“(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

“(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

“(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

“(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

“[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, § 1803(b)(1), formerly § 1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered § 1803(b)(1) by Pub. L. 111–383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

“(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

“(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

“(g) UNITED STATES DEFINED.—For purposes of this section, the term ‘United States’, when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

“(h) EFFECTIVE DATE.—

“(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Dec. 30, 2005].

“(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

“SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

“(a) REQUIRED POLICIES.—

“(1) IN GENERAL.—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

“(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

“(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed

not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005].

“(b) ARMY FIELD MANUAL.—

“(1) TRANSLATION.—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic [sic] and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

“(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

“(c) TRANSMITTAL OF REGULATIONS.—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

“(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Dec. 30, 2005], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.”

SENSE OF CONGRESS CONCERNING DETAINEES; ACTIONS TO PREVENT ABUSE

Pub. L. 108–375, div. A, title X, §§ 1091, 1092, Oct. 28, 2004, 118 Stat. 2068, 2069, provided that:

“SEC. 1091. SENSE OF CONGRESS AND POLICY CONCERNING PERSONS DETAINED BY THE UNITED STATES.

“(a) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the abuses inflicted upon detainees at the Abu Ghraib prison in Baghdad, Iraq, are inconsistent with the professionalism, dedication, standards, and training required of individuals who serve in the United States Armed Forces;

“(2) the vast majority of members of the Armed Forces have upheld the highest possible standards of professionalism and morality in the face of illegal tactics and terrorist attacks and attempts on their lives;

“(3) the abuse of persons in United States custody in Iraq is appropriately condemned and deplored by the American people;

“(4) the Armed Forces are moving swiftly and decisively to identify, try, and, if found guilty, punish persons who perpetrated such abuse;

“(5) the Department of Defense and appropriate military authorities must continue to undertake corrective action, as appropriate, to address chain-of-command deficiencies and the systemic deficiencies identified in the incidents in question;

“(6) the Constitution, laws, and treaties of the United States and the applicable guidance and regulations of the United States Government prohibit the torture or cruel, inhuman, or degrading treatment of foreign prisoners held in custody by the United States;

“(7) the alleged crimes of a handful of individuals should not detract from the commendable sacrifices of over 300,000 members of the Armed Forces who have served, or who are serving, in Operation Iraqi Freedom; and

“(8) no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of United States.

“(b) POLICY.—It is the policy of the United States to—

“(1) ensure that no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or

punishment that is prohibited by the Constitution, laws, or treaties of the United States;

“(2) investigate and prosecute, as appropriate, all alleged instances of unlawful treatment of detainees in a manner consistent with the international obligations, laws, or policies of the United States;

“(3) ensure that all personnel of the United States Government understand their obligations in both wartime and peacetime to comply with the legal prohibitions against torture, cruel, inhuman, or degrading treatment of detainees in the custody of the United States;

“(4) ensure that, in a case in which there is doubt as to whether a detainee is entitled to prisoner of war status under the Geneva Conventions, such detainee receives the protections accorded to prisoners of war until the detainee’s status is determined by a competent tribunal; and

“(5) expeditiously process and, if appropriate, prosecute detainees in the custody of the United States, including those in the custody of the United States Armed Forces at Guantanamo Bay, Cuba.

“(c) DETAINEES.—For purposes of this section, the term ‘detainee’ means a person in the custody or under the physical control of the United States as a result of armed conflict.

“SEC. 1092. ACTIONS TO PREVENT THE ABUSE OF DETAINEES.

“(a) POLICIES REQUIRED.—The Secretary of Defense shall ensure that policies are prescribed not later than 150 days after the date of the enactment of this Act [Oct. 28, 2004] regarding procedures for Department of Defense personnel and contractor personnel of the Department of Defense intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the United States Government in a humane manner consistent with the international obligations and laws of the United States and the policies set forth in section 1091(b).

“(b) MATTERS TO BE INCLUDED.—In order to achieve the objective stated in subsection (a), the policies under that subsection shall specify, at a minimum, procedures for the following:

“(1) Ensuring that each commander of a Department of Defense detention facility or interrogation facility—

“(A) provides all assigned personnel with training, and documented acknowledgment of receiving training, regarding the law of war, including the Geneva Conventions; and

“(B) establishes standard operating procedures for the treatment of detainees.

“(2) Ensuring that each Department of Defense contract in which contract personnel in the course of their duties interact with individuals detained by the Department of Defense on behalf of the United States Government include a requirement that such contract personnel have received training, and documented acknowledgment of receiving training, regarding the international obligations and laws of the United States applicable to the detention of personnel.

“(3) Providing all detainees with information, in their own language, of the applicable protections afforded under the Geneva Conventions.

“(4) Conducting periodic unannounced and announced inspections of detention facilities in order to provide continued oversight of interrogation and detention operations.

“(5) Ensuring that, to the maximum extent practicable, detainees and detention facility personnel of a different gender are not alone together.

“(c) SECRETARY OF DEFENSE CERTIFICATION.—The Secretary of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogation of individuals detained by the Department of Defense on behalf of the United States Government have fulfilled an annual training requirement on

the law of war, the Geneva Conventions, and the obligations of the United States under international law.”

DETENTION, TREATMENT, AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM

Military Order of President of the United States, dated Nov. 13, 2001, 66 F.R. 57833, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40, 115 Stat. 224) [50 U.S.C. 1541 note] and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. Findings.

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks [50 U.S.C. 1621 note]).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

SEC. 2. Definition and Policy.

(a) The term “individual subject to this order” shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

SEC. 3. *Detention Authority of the Secretary of Defense.* Any individual subject to this order shall be—

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

SEC. 4. *Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.* [Superseded by Ex. Ord. No. 13425, set out as a note under section 948b of this title.]

SEC. 5. *Obligation of Other Agencies to Assist the Secretary of Defense.*

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

SEC. 6. *Additional Authorities of the Secretary of Defense.*

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

SEC. 7. *Relationship to Other Law and Forums.*

(1) Nothing in this order shall be construed to—

(1) authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order—

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding

sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term "State" includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

SEC. 8. *Publication.*

This order shall be published in the Federal Register.

GEORGE W. BUSH.

[For supersedure of provisions of Military Order of President of the United States, dated Nov. 13, 2001, set out above, related to trial by military commission, see Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, set out as a note under section 948b of this title.]

EX. ORD. NO. 13492. REVIEW AND DISPOSITION OF INDIVIDUALS DETAINED AT THE GUANTANAMO BAY NAVAL BASE AND CLOSURE OF DETENTION FACILITIES

Ex. Ord. No. 13492, Jan. 22, 2009, 74 F.R. 4897, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantanamo Bay Naval Base (Guantanamo) and promptly to close detention facilities at Guantanamo, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Definitions.* As used in this order:

(a) "Common Article 3" means Article 3 of each of the Geneva Conventions.

(b) "Geneva Conventions" means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(c) "Individuals currently detained at Guantanamo" and "individuals covered by this order" mean individuals currently detained by the Department of Defense in facilities at the Guantanamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.

SEC. 2. *Findings.*

(a) Over the past 7 years, approximately 800 individuals whom the Department of Defense has ever determined to be, or treated as, enemy combatants have been detained at Guantanamo. The Federal Government has moved more than 500 such detainees from Guantanamo, either by returning them to their home country or by releasing or transferring them to a third country. The Department of Defense has determined that a number of the individuals currently detained at Guantanamo are eligible for such transfer or release.

(b) Some individuals currently detained at Guantanamo have been there for more than 6 years, and most have been detained for at least 4 years. In view of the significant concerns raised by these detentions, both within the United States and internationally, prompt

and appropriate disposition of the individuals currently detained at Guantanamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice. Merely closing the facilities without promptly determining the appropriate disposition of the individuals detained would not adequately serve those interests. To the extent practicable, the prompt and appropriate disposition of the individuals detained at Guantanamo should precede the closure of the detention facilities at Guantanamo.

(c) The individuals currently detained at Guantanamo have the constitutional privilege of the writ of habeas corpus. Most of those individuals have filed petitions for a writ of habeas corpus in Federal court challenging the lawfulness of their detention.

(d) It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantanamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice. The unusual circumstances associated with detentions at Guantanamo require a comprehensive interagency review.

(e) New diplomatic efforts may result in an appropriate disposition of a substantial number of individuals currently detained at Guantanamo.

(f) Some individuals currently detained at Guantanamo may have committed offenses for which they should be prosecuted. It is in the interests of the United States to review whether and how any such individuals can and should be prosecuted.

(g) It is in the interests of the United States that the executive branch conduct a prompt and thorough review of the circumstances of the individuals currently detained at Guantanamo who have been charged with offenses before military commissions pursuant to the Military Commissions Act of 2006, Public Law 109-366, as well as of the military commission process more generally.

SEC. 3. Closure of Detention Facilities at Guantanamo. The detention facilities at Guantanamo for individuals covered by this order shall be closed as soon as practicable, and no later than 1 year from the date of this order. If any individuals covered by this order remain in detention at Guantanamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.

SEC. 4. Immediate Review of All Guantanamo Detentions.

(a) *Scope and Timing of Review.* A review of the status of each individual currently detained at Guantanamo (Review) shall commence immediately.

(b) *Review Participants.* The Review shall be conducted with the full cooperation and participation of the following officials:

- (1) the Attorney General, who shall coordinate the Review;
- (2) the Secretary of Defense;
- (3) the Secretary of State;
- (4) the Secretary of Homeland Security;
- (5) the Director of National Intelligence;
- (6) the Chairman of the Joint Chiefs of Staff; and
- (7) other officers or full-time or permanent part-time employees of the United States, including employees with intelligence, counterterrorism, military, and legal expertise, as determined by the Attorney General, with the concurrence of the head of the department or agency concerned.

(c) *Operation of Review.* The duties of the Review participants shall include the following:

- (1) *Consolidation of Detainee Information.* The Attorney General shall, to the extent reasonably practicable, and in coordination with the other Review participants, assemble all information in the posses-

sion of the Federal Government that pertains to any individual currently detained at Guantanamo and that is relevant to determining the proper disposition of any such individual. All executive branch departments and agencies shall promptly comply with any request of the Attorney General to provide information in their possession or control pertaining to any such individual. The Attorney General may seek further information relevant to the Review from any source.

(2) *Determination of Transfer.* The Review shall determine, on a rolling basis and as promptly as possible with respect to the individuals currently detained at Guantanamo, whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect their transfer or release. The Secretary of Defense, the Secretary of State, and, as appropriate, other Review participants shall work to effect promptly the release or transfer of all individuals for whom release or transfer is possible.

(3) *Determination of Prosecution.* In accordance with United States law, the cases of individuals detained at Guantanamo not approved for release or transfer shall be evaluated to determine whether the Federal Government should seek to prosecute the detained individuals for any offenses they may have committed, including whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution, and the Review participants shall in turn take the necessary and appropriate steps based on such determinations.

(4) *Determination of Other Disposition.* With respect to any individuals currently detained at Guantanamo whose disposition is not achieved under paragraphs (2) or (3) of this subsection, the Review shall select lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of such individuals. The appropriate authorities shall promptly implement such dispositions.

(5) *Consideration of Issues Relating to Transfer to the United States.* The Review shall identify and consider legal, logistical, and security issues relating to the potential transfer of individuals currently detained at Guantanamo to facilities within the United States, and the Review participants shall work with the Congress on any legislation that may be appropriate.

SEC. 5. Diplomatic Efforts. The Secretary of State shall expeditiously pursue and direct such negotiations and diplomatic efforts with foreign governments as are necessary and appropriate to implement this order.

SEC. 6. Humane Standards of Confinement. No individual currently detained at Guantanamo shall be held in the custody or under the effective control of any officer, employee, or other agent of the United States Government, or at a facility owned, operated, or controlled by a department or agency of the United States, except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions. The Secretary of Defense shall immediately undertake a review of the conditions of detention at Guantanamo to ensure full compliance with this directive. Such review shall be completed within 30 days and any necessary corrections shall be implemented immediately thereafter.

SEC. 7. Military Commissions. The Secretary of Defense shall immediately take steps sufficient to ensure that during the pendency of the Review described in section 4 of this order, no charges are sworn, or referred to a military commission under the Military Commissions Act of 2006 and the Rules for Military Commissions, and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered, and all proceedings pending in the United States Court of Military Commission Review, are halted.

SEC. 8. General Provisions.

(a) Nothing in this order shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainees not covered by this order.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13567. PERIODIC REVIEW OF INDIVIDUALS DETAINED AT GUANTÁNAMO BAY NAVAL STATION PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE

Ex. Ord. No. 13567, Mar. 7, 2011, 76 F.R. 13277, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force of September 2001 (AUMF), Public Law 107-40, and in order to ensure that military detention of individuals now held at the U.S. Naval Station, Guantánamo Bay, Cuba (Guantánamo), who were subject to the interagency review under section 4 of Executive Order 13492 of January 22, 2009, continues to be carefully evaluated and justified, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Scope and Purpose.* (a) The periodic review described in section 3 of this order applies only to those detainees held at Guantánamo on the date of this order, whom the interagency review established by Executive Order 13492 has (i) designated for continued law of war detention; or (ii) referred for prosecution, except for those detainees against whom charges are pending or a judgment of conviction has been entered.

(b) This order is intended solely to establish, as a discretionary matter, a process to review on a periodic basis the executive branch's continued, discretionary exercise of existing detention authority in individual cases. It does not create any additional or separate source of detention authority, and it does not affect the scope of detention authority under existing law. Detainees at Guantánamo have the constitutional privilege of the writ of habeas corpus, and nothing in this order is intended to affect the jurisdiction of Federal courts to determine the legality of their detention.

(c) In the event detainees covered by this order are transferred from Guantánamo to another U.S. detention facility where they remain in law of war detention, this order shall continue to apply to them.

SEC. 2. *Standard for Continued Detention.* Continued law of war detention is warranted for a detainee subject to the periodic review in section 3 of this order if it is necessary to protect against a significant threat to the security of the United States.

SEC. 3. *Periodic Review.* The Secretary of Defense shall coordinate a process of periodic review of continued law of war detention for each detainee described in section 1(a) of this order. In consultation with the Attorney General, the Secretary of Defense shall issue implementing guidelines governing the process, consistent with the following requirements:

(a) *Initial Review.* For each detainee, an initial review shall commence as soon as possible but no later than 1 year from the date of this order. The initial review will consist of a hearing before a Periodic Review Board (PRB). The review and hearing shall follow a process that includes the following requirements:

(1) Each detainee shall be provided, in writing and in a language the detainee understands, with advance notice of the PRB review and an unclassified summary of the factors and information the PRB will consider in evaluating whether the detainee meets the standard set forth in section 2 of this order. The written summary shall be sufficiently comprehensive to provide adequate notice to the detainee of the reasons for continued detention.

(2) The detainee shall be assisted in proceedings before the PRB by a Government-provided personal rep-

resentative (representative) who possesses the security clearances necessary for access to the information described in subsection (a)(4) of this section. The representative shall advocate on behalf of the detainee before the PRB and shall be responsible for challenging the Government's information and introducing information on behalf of the detainee. In addition to the representative, the detainee may be assisted in proceedings before the PRB by private counsel, at no expense to the Government.

(3) The detainee shall be permitted to (i) present to the PRB a written or oral statement; (ii) introduce relevant information, including written declarations; (iii) answer any questions posed by the PRB; and (iv) call witnesses who are reasonably available and willing to provide information that is relevant and material to the standard set forth in section 2 of this order.

(4) The Secretary of Defense, in coordination with other relevant Government agencies, shall compile and provide to the PRB all information in the detainee disposition recommendations produced by the Task Force established under Executive Order 13492 that is relevant to the determination whether the standard in section 2 of this order has been met and on which the Government seeks to rely for that determination. In addition, the Secretary of Defense, in coordination with other relevant Government agencies, shall compile any additional information relevant to that determination, and on which the Government seeks to rely for that determination, that has become available since the conclusion of the Executive Order 13492 review. All mitigating information relevant to that determination must be provided to the PRB.

(5) The information provided in subsection (a)(4) of this section shall be provided to the detainee's representative. In exceptional circumstances where it is necessary to protect national security, including intelligence sources and methods, the PRB may determine that the representative must receive a sufficient substitute or summary, rather than the underlying information. If the detainee is represented by private counsel, the information provided in subsection (a)(4) of this section shall be provided to such counsel unless the Government determines that the need to protect national security, including intelligence sources and methods, or law enforcement or privilege concerns, requires the Government to provide counsel with a sufficient substitute or summary of the information. A sufficient substitute or summary must provide a meaningful opportunity to assist the detainee during the review process.

(6) The PRB shall conduct a hearing to consider the information described in subsection (a)(4) of this section, and other relevant information provided by the detainee or the detainee's representative or counsel, to determine whether the standard in section 2 of this order is met. The PRB shall consider the reliability of any information provided to it in making its determination.

(7) The PRB shall make a prompt determination, by consensus and in writing, as to whether the detainee's continued detention is warranted under the standard in section 2 of this order. If the PRB determines that the standard is not met, the PRB shall also recommend any conditions that relate to the detainee's transfer. The PRB shall provide a written summary of any final determination in unclassified form to the detainee, in a language the detainee understands, within 30 days of the determination when practicable.

(8) The Secretary of Defense shall establish a secretariat to administer the PRB review and hearing process. The Director of National Intelligence shall assist in preparing the unclassified notice and the substitutes or summaries described above. Other executive departments and agencies shall assist in the process of providing the PRB with information required for the review processes detailed in this order.

(b) *Subsequent Full Review.* The continued detention of each detainee shall be subject to subsequent full reviews and hearings by the PRB on a triennial basis.

Each subsequent review shall employ the procedures set forth in section 3(a) of this order.

(c) *File Reviews.* The continued detention of each detainee shall also be subject to a file review every 6 months in the intervening years between full reviews. This file review will be conducted by the PRB and shall consist of a review of any relevant new information related to the detainee compiled by the Secretary of Defense, in coordination with other relevant agencies, since the last review and, as appropriate, information considered during any prior PRB review. The detainee shall be permitted to make a written submission in connection with each file review. If, during the file review, a significant question is raised as to whether the detainee's continued detention is warranted under the standard in section 2 of this order, the PRB will promptly convene a full review pursuant to the standards in section 3(a) of this order.

(d) *Review of PRB Determinations.* The Review Committee (Committee), as defined in section 9(d) of this order, shall conduct a review if (i) a member of the Committee seeks review of a PRB determination within 30 days of that determination; or (ii) consensus within the PRB cannot be reached.

SEC. 4. *Effect of Determination to Transfer.* (a) If a final determination is made that a detainee does not meet the standard in section 2 of this order, the Secretaries of State and Defense shall be responsible for ensuring that vigorous efforts are undertaken to identify a suitable transfer location for any such detainee, outside of the United States, consistent with the national security and foreign policy interests of the United States and the commitment set forth in section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105-277).

(b) The Secretary of State, in consultation with the Secretary of Defense, shall be responsible for obtaining appropriate security and humane treatment assurances regarding any detainee to be transferred to another country, and for determining, after consultation with members of the Committee, that it is appropriate to proceed with the transfer.

(c) The Secretary of State shall evaluate humane treatment assurances in all cases, consistent with the recommendations of the Special Task Force on Interrogation and Transfer Policies established by Executive Order 13491 of January 22, 2009.

SEC. 5. *Annual Committee Review.* (a) The Committee shall conduct an annual review of sufficiency and efficacy of transfer efforts, including:

(1) the status of transfer efforts for any detainee who has been subject to the periodic review under section 3 of this order, whose continued detention has been determined not to be warranted, and who has not been transferred more than 6 months after the date of such determination;

(2) the status of transfer efforts for any detainee whose petition for a writ of habeas corpus has been granted by a U.S. Federal court with no pending appeal and who has not been transferred;

(3) the status of transfer efforts for any detainee who has been designated for transfer or conditional detention by the Executive Order 13492 review and who has not been transferred; and

(4) the security and other conditions in the countries to which detainees might be transferred, including a review of any suspension of transfers to a particular country, in order to determine whether further steps to facilitate transfers are appropriate or to provide a recommendation to the President regarding whether continuation of any such suspension is warranted.

(b) After completion of the initial reviews under section 3(a) of this order, and at least once every 4 years thereafter, the Committee shall review whether a continued law of war detention policy remains consistent with the interests of the United States, including national security interests.

SEC. 6. *Continuing Obligation of the Departments of Justice and Defense to Assess Feasibility of Prosecution.* As to each detainee whom the interagency review established

by Executive Order 13492 has designated for continued law of war detention, the Attorney General and the Secretary of Defense shall continue to assess whether prosecution of the detainee is feasible and in the national security interests of the United States, and shall refer detainees for prosecution, as appropriate.

SEC. 7. *Obligation of Other Departments and Agencies to Assist the Secretary of Defense.* All departments, agencies, entities, and officers of the United States, to the maximum extent permitted by law, shall provide the Secretary of Defense such assistance as may be requested to implement this order.

SEC. 8. *Legality of Detention.* The process established under this order does not address the legality of any detainee's law of war detention. If, at any time during the periodic review process established in this order, material information calls into question the legality of detention, the matter will be referred immediately to the Secretary of Defense and the Attorney General for appropriate action.

SEC. 9. *Definitions.* (a) "Law of War Detention" means: detention authorized by the Congress under the AUMF, as informed by the laws of war.

(b) "Periodic Review Board" means: a board composed of senior officials tasked with fulfilling the functions described in section 3 of this order, one appointed by each of the following departments and offices: the Departments of State, Defense, Justice, and Homeland Security, as well as the Offices of the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff.

(c) "Conditional Detention" means: the status of those detainees designated by the Executive Order 13492 review as eligible for transfer if one of the following conditions is satisfied: (1) the security situation improves in Yemen; (2) an appropriate rehabilitation program becomes available; or (3) an appropriate third-country resettlement option becomes available.

(d) "Review Committee" means: a committee composed of the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff.

SEC. 10. *General Provisions.* (a) Nothing in this order shall prejudice the authority of the Secretary of Defense or any other official to determine the disposition of any detainee not covered by this order.

(b) This order shall be implemented subject to the availability of necessary appropriations and consistent with applicable law including: the Convention Against Torture; Common Article 3 of the Geneva Conventions; the Detainee Treatment Act of 2005; and other laws relating to the transfer, treatment, and interrogation of individuals detained in an armed conflict.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Nothing in this order, and no determination made under this order, shall be construed as grounds for release of detainees covered by this order into the United States.

BARACK OBAMA.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

- (2) Cadets, aviation cadets, and midshipmen.
 - (3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.
 - (4) Retired members of a regular component of the armed forces who are entitled to pay.
 - (5) Retired members of a reserve component who are receiving hospitalization from an armed force.
 - (6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.
 - (7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.
 - (8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.
 - (9) Prisoners of war in custody of the armed forces.
 - (10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.
 - (11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
 - (12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
 - (13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.
- (b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.
- (c) Notwithstanding any other provision of law, a person serving with an armed force who—
- (1) submitted voluntarily to military authority;
 - (2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;
 - (3) received military pay or allowances; and
 - (4) performed military duties;
- is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.
- (d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense

against this chapter may be ordered to active duty involuntarily for the purpose of—

- (A) investigation under section 832 of this title (article 32);
 - (B) trial by court-martial; or
 - (C) nonjudicial punishment under section 815 of this title (article 15).
- (2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—
- (A) on active duty; or
 - (B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.
- (3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.
- (4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.
- (5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—
- (A) be sentenced to confinement; or
 - (B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; Pub. L. 86-70, §6(b), June 25, 1959, 73 Stat. 142; Pub. L. 86-624, §4(b), July 12, 1960, 74 Stat. 411; Pub. L. 87-651, title I, §104, Sept. 7, 1962, 76 Stat. 508; Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-107, title VIII, §801(a), Nov. 9, 1979, 93 Stat. 810; Pub. L. 96-513, title V, §511(24), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98-209, §13(a), Dec. 6, 1983, 97 Stat. 1408; Pub. L. 99-661, div. A, title VIII, §804(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 104-106, div. A, title XI, §1133(b), Feb. 10, 1996, 110 Stat. 466; Pub. L. 109-364, div. A, title V, §552, Oct. 17, 2006, 120 Stat. 2217; Pub. L. 109-366, §4(a)(1), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111-84, div. A, title XVIII, §1803(a)(1), Oct. 28, 2009, 123 Stat. 2612.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
802	50:552.	May 5, 1950, ch. 169, §1 (Art. 2), 64 Stat. 109.

In clause (1), the words "Members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8), the words "of the United States" are omitted as surplusage.

In clause (3), the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4), the word “receive” is omitted as surplusage.

In clauses (4) and (5), the word “members” is substituted for the word “personnel”.

In clause (8), the word “members” is substituted for the word “personnel”.

In clauses (11) and (12), the word “outside” is substituted for the word “without” wherever it occurs. The words “the continental limits of” are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words “the provision of”, “all”, and “territories” are omitted as surplusage.

In clause (12), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

1962 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
802(11), (12).	50:552(11) and (12).	Aug. 1, 1956, ch. 852, §23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 1 (Art. 2) of act May 5, 1950, ch. 169, cited as the source of this section, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2009—Subsec. (a)(13). Pub. L. 111-84 amended par. (13) generally. Prior to amendment, par. (13) read as follows: “Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.”

2006—Subsec. (a)(10). Pub. L. 109-364 substituted “declared war or a contingency operation” for “war”.

Subsec. (a)(13). Pub. L. 109-366 added par. (13).

1996—Subsec. (e). Pub. L. 104-106 added subsec. (e).

1988—Subsec. (a)(11), (12). Pub. L. 100-456 struck out “the Canal Zone,” before “the Commonwealth”.

1986—Subsec. (a)(3). Pub. L. 99-661, §804(a)(1), substituted “on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service” for “they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter”.

Subsec. (d). Pub. L. 99-661, §804(a)(2), added subsec. (d).

1983—Subsec. (a)(11), (12). Pub. L. 98-209, §13(a)(1), substituted “outside the Canal Zone” for “outside the following: the Canal Zone” and inserted “the Commonwealth of” before “Puerto Rico”.

Subsec. (b). Pub. L. 98-209, §13(a)(2), struck out “of this section” after “subsection (a)”.

1980—Subsec. (a)(8). Pub. L. 96-513 substituted “National Oceanic and Atmospheric Administration” for “Environmental Science Services Administration”.

1979—Pub. L. 96-107 designated existing provisions as subsec. (a) and added subssecs. (b) and (c).

1966—Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey” in cl. (8).

1962—Pub. L. 87-651 inserted “Guam,” after “Puerto Rico,” in cls. (11) and (12).

1960—Pub. L. 86-624 struck out “the main group of the Hawaiian Islands,” before “Puerto Rico” in cls. (11) and (12).

1959—Pub. L. 86-70 struck out “that part of Alaska east of longitude 172 degrees west,” before “the Canal Zone” in cls. (11) and (12).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §804(e), Nov. 14, 1986, 100 Stat. 3908, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99-661, set out below].”

Pub. L. 99-661, div. A, title VIII, §808, Nov. 14, 1986, 100 Stat. 3909, provided that: “Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806, respectively, of this title], this title and the amendments made by this title [enacting section 850a of this title, amending this section and sections 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under this section and sections 801, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of—

“(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

“(2) the date specified in an Executive order for such amendments to take effect.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective 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 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

APPLICABILITY OF UNIFORM CODE OF MILITARY JUSTICE TO MEMBERS OF THE ARMED FORCES ORDERED TO DUTY OVERSEAS IN INACTIVE DUTY FOR TRAINING STATUS

Pub. L. 109-364, div. A, title V, §551, Oct. 17, 2006, 120 Stat. 2217, provided that: “Not later than March 1, 2007, the Secretaries of the military departments shall prescribe regulations, or amend current regulations, in order to provide that members of the Armed Forces who are ordered to duty at locations overseas in an inactive duty for training status are subject to the jurisdiction of the Uniform Code of Military Justice, pursuant to the provisions of section 802(a)(3) of title 10, United States Code (article 2(a)(3) of the Uniform Code of Military Justice), continuously from the commencement of execution of such orders to the conclusion of such orders.”

ADVISORY COMMITTEE ON CRIMINAL LAW JURISDICTION OVER CIVILIANS ACCOMPANYING ARMED FORCES IN TIME OF ARMED CONFLICT

Pub. L. 104-106, div. A, title XI, §1151, Feb. 10, 1996, 110 Stat. 467, directed the Secretary of Defense and the Attorney General, not later than 45 days after Feb. 10, 1996, to jointly appoint an advisory committee to re-

view and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces outside the United States in time of armed conflict, directed the committee to transmit to the Secretary of Defense and the Attorney General a report setting forth its findings and recommendations not later than Dec. 15, 1996, directed the Secretary of Defense and the Attorney General to jointly transmit the report of the committee to Congress not later than Jan. 15, 1997, and provided that the committee would terminate 30 days after the date on which the report had been submitted to Congress.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355; Ex. Ord. No. 13286, §76, Feb. 28, 2003, 68 F.R. 106231, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated

to the principles which made my country free. I will trust in my God and in the United States of America.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Pub. L. 99-661, div. A, title VIII, §804(b), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 102-484, div. A, title X, §1063, Oct. 23, 1992, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
803(a)	50:553(a).	May 5, 1950, ch. 169, §1 (Art. 3), 64 Stat. 109.
803(b)	50:553(b).	
803(c)	50:553(c).	

In subsection (a), the words "the provisions of" are omitted as surplusage. The words "no * * * may" are substituted for the words "any * * * shall not". The word "for" is substituted for the word "of" before the words "five years". The words "of a State, a Territory, or" are substituted for the words "any State or Territory thereof or of". The word "court-martial" is substituted for the word "courts-martial".

In subsection (b), the words "Each person" are substituted for the words "All persons". The words "who is later" are substituted for the word "subsequently". The words "his discharge is" are substituted for the words "said discharge shall * * * be". The words "the provisions of" are omitted as surplusage. The word "is" is substituted for the words "shall * * * be". The words "he is" are substituted for the words "they shall be". The word "before" is substituted for the words "prior to".

In subsection (c), the words "No * * * may" are substituted for the words "Any * * * shall not". The word "later" is substituted for the word "subsequent".

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Subject to section 843 of this title (article 43), no person charged with having committed, while in a

status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status."

1986—Subsec. (d). Pub. L. 99-661 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title X, §1067, Oct. 23, 1992, 106 Stat. 2506, provided that: "The amendments made by sections 1063, 1064, 1065, and 1066 [amending this section and sections 857, 863, 911, 918, and 920 of this title] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply with respect to offenses committed on or after that date."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99-661, set out as notes under section 802 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
804(a)	50:554(a).	May 5, 1950, ch. 169, §1 (Art. 4), 64 Stat. 110.
804(b)	50:554(b).	
804(c)	50:554(c).	
804(d)	50:554(d).	

In subsection (a), the word "If" is substituted for the word "When". The word "commissioned" is inserted before the word "officer". The word "considered" is substituted for the word "held".

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "If" is substituted for the word "Where". The words "the authority of" are omitted as surplusage. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not to a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position" for clarity. The word "receive" is omitted as surplusage.

In subsection (d), the word "If" is substituted for the word "When". The words "he has no" are substituted for the words "there shall not be a".

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2 of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
805	50:555.	May 5, 1950, ch. 169, §1 (Art. 5), 64 Stat. 110.

The word "applies" is substituted for the words "shall be applicable".

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a su-

perior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil officer in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Pub. L. 90-179, §1(3), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90-632, §2(2), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98-209, §2(b), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99-661, div. A, title VIII, §807(a), Nov. 14, 1986, 100 Stat. 3909; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112-239, div. A, title V, §531(d)(1), Jan. 2, 2013, 126 Stat. 1726.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
806(a)	50:556(a).	May 5, 1950, ch. 169, §1
806(b)	50:556(b).	(Art. 6), 64 Stat. 110.
806(c)	50:556(c).	

In subsection (b), the word “entitled” is substituted for the word “authorized”.

In subsection (c), the words “may later” are substituted for the words “shall subsequently”.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-239 substituted “The Judge Advocates General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, or senior members of their staffs, shall” for “The Judge Advocate General or senior members of his staff shall”.

2002—Subsec. (d)(2). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1986—Subsec. (d). Pub. L. 99-661 added subsec. (d).

1983—Subsec. (a). Pub. L. 98-209 substituted “Air Force, and” for “and Air Force and law specialists of the”.

1968—Subsec. (c). Pub. L. 90-632 substituted “military judge” for “law officer”.

1967—Subsec. (a). Pub. L. 90-179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §807(b), Nov. 14, 1986, 100 Stat. 3909, provided that: “The amendment made by subsection (a) [amending this section]—

“(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

“(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.”

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.

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge’s position. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 101-189, div. A, title XIII, §1303, Nov. 29, 1989, 103 Stat. 1576; amended Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (b). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec.	Art.	
807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged with offenses.
811.	11.	Reports and receiving of prisoners.
812.	12.	Confinement with enemy prisoners prohibited.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers

have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
807(a)	50:561(a).	May 5, 1950, ch. 169, §1 (Art. 7), 64 Stat. 111.
807(b)	50:561(b).	
807(c)	50:561(c).	

In subsection (a), the words “into custody” and “of a person” are transposed.

In subsection (c), the words “All” and “shall” are omitted as surplusage. The word “Commissioned” is inserted before the word “officers” for clarity. The word “therein” is substituted for the words “in the same”.

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40; Pub. L. 109-163, div. A, title X, §1057(a)(4), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
808	50:562.	May 5, 1950, ch. 169, §1 (Art. 8), 64 Stat. 111.

The word “may” is substituted for the words “It shall be lawful for * * * to”. The words “a State, Territory, Commonwealth, or possession, or the District of Columbia” are substituted for the words “any State, District, Territory, or possession of the United States”. The words “of the United States”, before the words “and deliver”, are omitted as surplusage. The words “those forces” are substituted for the words “the armed forces of the United States”, after the words “custody of”.

AMENDMENTS

2006—Pub. L. 109-163 substituted “Commonwealth, possession,” for “Territory, Commonwealth, or possession,”.

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose

authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
809(a)	50:563(a).	May 5, 1950, ch. 169, §1 (Art. 9), 64 Stat. 111.
809(b)	50:563(b).	
809(c)	50:563(c).	
809(d)	50:563(d).	
809(e)	50:563(e).	

In subsection (b), the word “commissioned” is inserted before the word “officer” for clarity. The words “member” and “members”, respectively, are substituted for the words “person” and “persons”.

In subsection (c), the words “A commissioned” are substituted for the word “An” for clarity. The word “commissioned” is inserted after the word “another” for clarity.

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

In subsection (e), the word “limits” is substituted for the words “shall be construed to limit”.

§ 810. Art. 10. Restraint of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
810	50:564.	May 5, 1950, ch. 169, §1 (Art. 10), 64 Stat. 111.

The word “he” is substituted for the words “such person”.

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of

the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
811(a)	50:565(a).	May 5, 1950, ch. 169, §1 (Art. 11), 64 Stat. 112.
811(b)	50:565(b).	

In subsection (a), the word “may” is substituted for the word “shall”. The words “a commissioned” are substituted for the word “an” for clarity.

§ 812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
812	50:566.	May 5, 1950, ch. 169, §1 (Art. 12), 64 Stat. 112.

The words “of the United States” are omitted as surplusage. The word “may” is substituted for the word “shall”.

§ 813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 97-81, § 3, Nov. 20, 1981, 95 Stat. 1087.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
813	50:567.	May 5, 1950, ch. 169, §1 (Art. 13), 64 Stat. 112.

The words “the provisions of” are omitted as surplusage. The word “results” is changed to the singular. The word “may” is substituted for the word “shall”.

AMENDMENTS

1981—Pub. L. 97-81 substituted “No person, while being held for trial, may be subjected” for “Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each person held as the result of a court-martial sentence announced on or after that date, see section 7(a) and (b)(2) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
814(a)	50:568(a).	May 5, 1950, ch. 169, §1 (Art. 14), 64 Stat. 112.
814(b)	50:568(b).	

In subsection (a), the words “Secretary concerned” are substituted for the words “Secretary of the Department”.

In subsection (b), the word “interrupts” is substituted for the words “shall be held to interrupt”. The word “his” is substituted for the words “the said court-martial”.

REGULATIONS FOR DELIVERY OF MILITARY PERSONNEL TO CIVIL AUTHORITIES WHEN CHARGED WITH CERTAIN OFFENSES

Pub. L. 100-456, div. A, title VII, §721, Sept. 29, 1988, 102 Stat. 2001, directed the Secretary of Defense to ensure that the Secretaries of the military departments had issued uniform regulations pursuant to this section not later than 90 days after Sept. 29, 1988, and to transmit to committees of Congress a copy of such regulations and any recommendations for additional legislation not later than 120 days after Sept. 29, 1988.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

Sec. Art.
815. 15. Commanding officer's non-judicial punishment.

§ 815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations,

rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

- (1) arrest in quarters for more than seven days;
- (2) correctional custody for more than seven days;
- (3) forfeiture of more than seven days' pay;
- (4) reduction of one or more pay grades from the fourth or a higher pay grade;
- (5) extra duties for more than 14 days;
- (6) restriction for more than 14 days; or
- (7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 87-648, §1, Sept. 7, 1962, 76 Stat. 447; Pub. L. 90-179, §1(4), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90-623, §2(4), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 98-209, §§2(c), 13(b), Dec. 6, 1983, 97 Stat. 1393, 1408; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
815(a)	50:571(a).	May 5, 1950, ch. 169, §1 (Art. 15), 64 Stat. 112.
815(b)	50:571(b).	
815(c)	50:571(c).	
815(d)	50:571(d).	
815(e)	50:571(e).	

In subsection (a), the words “not more than” are substituted for the words “a period not to exceed”, “not to exceed”, and “a period not exceeding”.

In subsection (a)(1), the words “and warrant officers” are omitted, since the word “officer”, as defined in section 101(14) of this title, includes warrant officers.

In clause (1)(C), the words “one month’s pay” are substituted for the words “his pay per month for a period not exceeding one month”.

In subsection (b), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (c), the word “subsections” is substituted for the word “subdivisions”. The words “enlisted members” are substituted for the words “enlisted persons”.

In subsections (d) and (e), the words “authority of” are omitted as surplusage.

In subsection (d), the word “considers” is substituted for the word “deems”. The word “may” is substituted for the words “shall have power to * * * to”.

In subsection (e), the words “is not” are substituted for the words “shall not be”.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation” in concluding provisions.

1983—Pub. L. 98-209, §13(b)(1), substituted “non-judicial” for “nonjudicial” in section catchline.

Subsec. (b). Pub. L. 98-209, §13(b)(2)(A), struck out “of this section” after “subsection (a)” in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98-209, §13(b)(2)(B), substituted “clause (A)” for “subsection (b)(2)(A)”.

Subsec. (e). Pub. L. 98-209, §2(c), substituted “or a lawyer of the” for “of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or”.

1968—Subsec. (e). Pub. L. 90-623 substituted “or a law specialist or lawyer of the Coast Guard or Department of Transportation” for “or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department”.

1967—Subsec. (e). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87-648 redesignated former subsec. (b) as (a), inserted references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary’s regulations, and prohibited, except for members attached to or embarked on a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87-648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month’s pay may be ordered forfeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month’s pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month’s pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days’ pay, and detention of not more than 14 days’ pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i) to (vii) of subpar. (2) (H) upon per-

sonnel of his command other than officers, changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included, to authorize extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year, prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount impossible for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively, and in those cases where forfeiture of pay is combined with detention of pay, defining "correctional custody", and struck out provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87-648 substituted "under subsection (b)(2)(A)-(G) as the Secretary concerned may specifically prescribe by regulation" for "to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b)," and deleted "for minor offenses" after "an officer in charge may".

Subsecs. (d), (e). Pub. L. 87-648 added subsec. (d), redesignated former subsec. (d) as (e), inserted provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted "The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment" for "The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected." Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 87-648 redesignated former subsec. (e) as (f) and added subsec. (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 2(c) of 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. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note

under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-648, §2, Sept. 7, 1962, 76 Stat. 450, provided that: "This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [September 1962]."

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

Sec.	Art.
816.	16. Courts-martial classified.
817.	17. Jurisdiction of courts-martial in general.
818.	18. Jurisdiction of general courts-martial.
819.	19. Jurisdiction of special courts-martial.
820.	20. Jurisdiction of summary courts-martial.
821.	21. Jurisdiction of courts-martial not exclusive.

§ 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, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a); 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 orally on the record or 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Pub. L. 90-632, §2(3), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98-209, §3(a), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107-107, div. A, title V, §582(a), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
816	50:576.	May 5, 1950, ch. 169, §1 (Art. 16), 64 Stat. 113.

The word "The" is substituted for the words "There shall be". The word "are" is substituted for the word "namely". The words "not less than five members" are substituted for the words "any number of members not less than five". The words "not less than three members" are substituted for the words "any number of members not less than three". The word "commissioned" is inserted before the word "officer" in clause (3) for clarity.

AMENDMENTS

2001—Par. (1)(A). Pub. L. 107-107 inserted "or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined

under section 825a of this title (article 25a)” after “five members”.

1983—Par. (1)(B), Pub. L. 98-209 substituted “orally on the record or in writing” for “in writing”.

1968—Pub. L. 90-632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §582(d), Dec. 28, 2001, 115 Stat. 1125, provided that: “The amendments made by this section [enacting section 825a of this title and amending this section and section 829 of this title] shall apply with respect to offenses committed after December 31, 2002.”

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.

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
817(a)	50:577(a).	May 5, 1950, ch. 169, §1 (Art. 17), 64 Stat. 114.
817(b)	50:577(b).	

In subsection (a), the word “has” is substituted for the words “shall have”.

In subsection (b), the word “after” is substituted for the words “subsequent to”. The words “the provisions of” are omitted as surplusage. The words “department that includes the” are inserted before the words “armed force”, since the review is carried out by the department and not by the armed force.

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this

chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, §2(4), Oct. 24, 1968, 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
818	50:578.	May 5, 1950, ch. 169, §1 (Art. 18), 64 Stat. 114.

The word “shall” is omitted as surplusage wherever it occurs.

AMENDMENTS

1968—Pub. L. 90-632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

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.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year. A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, §2(5), Oct. 24, 1968, 82 Stat. 1335; Pub. L.

106-65, div. A, title V, §577(a), Oct. 5, 1999, 113 Stat. 625; Pub. L. 107-107, div. A, title X, §1048(g)(4), Dec. 28, 2001, 115 Stat. 1228.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
819	50:579.	May 5, 1950, ch. 169, §1 (Art. 19), 64 Stat. 114.

The word “shall” in the first sentence is omitted as surplusage. The words “for more than” are substituted for the words “in excess of”. The words “more than” are substituted for the words “a period exceeding”. The word “may” is substituted for the word “shall” in the last sentence.

AMENDMENTS

2001—Pub. L. 107-107, §1048(g)(4), amended directory language of Pub. L. 106-65, §577(a)(2). See 1999 Amendment note below.

1999—Pub. L. 106-65, §577(a)(2), as amended by Pub. L. 107-107, §1048(g)(4), inserted “, confinement for more than six months, or forfeiture of pay for more than six months” after “A bad-conduct discharge” in third sentence.

Pub. L. 106-65, §577(a)(1), substituted “one year” for “six months” in two places in second sentence.

1968—Pub. L. 90-632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title X, §1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(4) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106-65 as enacted.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title V, §577(b), Oct. 5, 1999, 113 Stat. 625, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act [Oct. 5, 1999] and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial.”

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.

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. 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. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any pun-

ishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month’s pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, §2(6), Oct. 24, 1968, 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
820	50:580.	May 5, 1950, ch. 169, §1 (Art. 20), 64 Stat. 114.

The word “shall” in the first sentence is omitted as surplusage. The word “may” is substituted for the word “shall” in the second sentence. The words “the provisions of” are omitted as surplusage. The word “if” is substituted for the word “where”. The words “for more than” are substituted for the words “in excess of”. The words “more than” are substituted for the words “pay in excess of”.

AMENDMENTS

1968—Pub. L. 90-632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person’s objection if he has previously been offered and has refused article 15 punishment.

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.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
821	50:581.	May 5, 1950, ch. 169, §1 (Art. 21), 64 Stat. 115.

The words “do not deprive” are substituted for the words “shall not be construed as depriving”. The words “with respect to” are substituted for the words “in respect of”.

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.

Sec.	Art.	
825.	25.	Who may serve on courts-martial.
825a.	25a.	Number of members in capital cases.
826.	26.	Military judge of a general or special court-martial.
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Absent and additional members.

AMENDMENTS

2001—Pub. L. 107-107, div. A, title V, §582(b)(2), Dec. 28, 2001, 115 Stat. 1124, added item 825a.
 1968—Pub. L. 90-632, §2(8), Oct. 24, 1968, 82 Stat. 1336, substituted “Military judge of a general or special court-martial” for “Law officer of a general court-martial” in item 826.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

- (1) the President of the United States;
- (2) the Secretary of Defense;
- (3) the commanding officer of a unified or specified combatant command;
- (4) the Secretary concerned;
- (5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
- (6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
- (7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;
- (8) any other commanding officer designated by the Secretary concerned; or
- (9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 99-433, title II, §211(b), Oct. 1, 1986, 100 Stat. 1017; Pub. L. 109-163, div. A, title X, §1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
822(a)	50:586(a).	May 5, 1950, ch. 169, §1
822(b)	50:586(b).	(Art. 22), 64 Stat. 115.

Subsection (a)(2) is substituted for the words “the Secretary of a Department”.

In subsection (a)(4), the words “continental limits of the” are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words “any other commanding officer” are substituted for the words “such other commanding officers as may be”.

In subsection (b), the word “If” is substituted for the word “When”. The words “if considered” are substituted for the words “when deemed”.

AMENDMENTS

2006—Subsec. (a)(5). Pub. L. 109-163 struck out “a Territorial Department,” before “an Army Group”.

1986—Subsec. (a)(2) to (9). Pub. L. 99-433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- (7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
823(a)	50:587(a).	May 5, 1950, ch. 169, §1
823(b)	50:587(b).	(Art. 23), 64 Stat. 115.

In subsection (a)(7), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (b), the word “If” is substituted for the word “When”. The words “if considered” are substituted for the words “when deemed”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
824(a)	50:588(a).	May 5, 1950, ch. 169, § 1 (Art. 24), 64 Stat. 116.
824(b)	50:588(b).	

In subsection (a)(4), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the words "only one commissioned" are substituted for the words "but one" for clarity. The word "considered" is substituted for the word "deemed".

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, 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, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof of such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 90-632, §2(7), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98-209, §§3(b), 13(c), Dec. 6, 1983, 97 Stat. 1394, 1408; Pub. L. 99-661, div. A, title VIII, §803(a), Nov. 14, 1986, 100 Stat. 3906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
825(a)	50:589(a).	May 5, 1950, ch. 169, § 1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word "commissioned" is inserted before the word "officer" for clarity. The word "is" is substituted for the words "shall be".

In subsections (a), (b), and (c)(1), the words "with the armed forces" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be". The words "a commissioned" are substituted for the word "an" for clarity.

In subsection (c), the words "member" and "members", respectively are substituted for the words "person" and "persons". The words "of an armed force" are inserted for clarity.

In subsection (c)(1), the word "is" is substituted for the words "shall be". The word "before" is substituted for the words "prior to". The words "the accused may not" are substituted for the words "no enlisted person shall", for clarity. The word "If" is substituted for the word "Where".

In subsection (c)(2), the word "means" is substituted for the words "shall mean". The words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "may" is substituted for the word "shall". The word "than", before the words "a body", is omitted as surplusage.

In subsection (d)(1), the word "may" is substituted for the word "shall". The word "member" is substituted for the word "person".

In subsection (d)(2), the word "is" is substituted for the words "shall be". The word "detail" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense. The words "member of an armed force" and "members of the armed forces", respec-

tively, are substituted for the words “person” and “persons”.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-661 substituted “has requested orally on the record or in writing” for “has requested in writing”.

1983—Subsec. (c)(2). Pub. L. 98-209, §13(c), struck out “the word” before “unit”.

Subsec. (e). Pub. L. 98-209, §3(b), added subsec. (e).

1968—Subsec. (c)(1). Pub. L. 90-632 inserted requirement that an accused’s request for inclusion of enlisted members on his court-martial be made before conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted “assembled” for “convened” to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §803(b), Nov. 14, 1986, 100 Stat. 3906, provided that: “The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title.”

Title VIII of Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 3(b) of 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.

§ 825a. Art. 25a. Number of members in capital cases

In a case in which the accused may be sentenced to a penalty of death, the number of members shall be not less than 12, unless 12 members are not reasonably available because of physical conditions or military exigencies, in which case the convening authority shall specify a lesser number of members not less than five, and the court may be assembled and the trial held with not less than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

(Added Pub. L. 107-107, div. A, title V, §582(b)(1), Dec. 28, 2001, 115 Stat. 1124.)

EFFECTIVE DATE

Section applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107-107, set out as an Effective Date of 2001 Amendment note under section 816 of this title.

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

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of

the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The 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 in accordance with regulations prescribed under subsection (a). 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90-632, §2(9), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98-209, §3(c)(1), Dec. 6, 1983, 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
826(a)	50:590(a).	May 5, 1950, ch. 169, §1
826(b)	50:590(b).	(Art. 26), 64 Stat. 117.

In subsection (a), the words “a commissioned” are substituted for the word “an” for clarity. The words “of the United States” are omitted as surplusage. The word “is” is substituted for the words “shall be”. The word “if” is substituted for the word “when”. The word “detail” is substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense.

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

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, §3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98-209, §3(c)(1)(B), substituted “in accordance with regulations prescribed under subsection (a). Unless” for “by the convening authority, and, unless”.

1968—Pub. L. 90-632 substituted “military judge” for “law officer” and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90-632 substituted reference to military judge for references to law officer and such law officer’s requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90-632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90-632 redesignated former subsec. (b) as (e) and substituted “military judge” for “law officer” and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) 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.

STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Pub. L. 90-632, §3(a), Oct. 24, 1968, 82 Stat. 1343, provided that: “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 [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.”

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant

trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(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;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90-179, §1(5), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90-632, §2(10), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98-209, §§2(d), 3(c)(2), Dec. 6, 1983, 97 Stat. 1393, 1394.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
827(a)	50:591(a).	May 5, 1950, ch. 169, §1 (Art. 27), 64 Stat. 117.
827(b)	50:591(b).	
827(c)	50:591(c).	

The words, “detail” and “detailed” are substituted for the words “appoint” and “appointed” throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word “and” is substituted for the words “together with”. The word “considers” is substituted for the word “deems”. The words “necessary or” are omitted as surplusage, since what is necessary is also appropriate. The word “may” is substituted for the word “shall”. The word “later” is substituted for the word “subsequently”.

In subsections (b) and (c), the word “must” is substituted for the word “shall”, since the clauses prescribe conditions and not commands.

In subsection (b), the word “for” is substituted for the words “in the case of”. The words “person * * * a person who is” are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-209, §3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98-209, §3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted “assistant or associate defense counsel” for “assistant defense counsel”.

Subsec. (b)(1). Pub. L. 98-209, §2(d)(1), substituted “judge advocate” for “judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard.”

Subsec. (c)(3). Pub. L. 98-209, §2(d)(2), struck out “, or a law specialist,” after “is a judge advocate”.

1968—Subsec. (a). Pub. L. 90-632, §2(10)(A), substituted “military judge” for “law officer”.

Subsec. (c). Pub. L. 90-632, §2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98-209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) 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.

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
828	50:592.	May 5, 1950, ch. 169, §1 (Art. 28), 64 Stat. 117.

The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The words, “detail or employ” are substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b)(1) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below the applicable minimum number of members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of members. 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.

(2) In this section, the term “applicable minimum number of members” means five members or, in a case in which the death penalty may be adjudged, the number of members determined under section 825a of this title (article 25a).

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. 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.

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 90-632, §2(11), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98-209, §3(d), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107-107, div. A, title V, §582(c), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
829(a)	50:593(a).	May 5, 1950, ch. 169, §1 (Art. 29), 64 Stat. 117.
829(b)	50:593(b).	
829(c)	50:593(c).	

In subsections (a), (b), and (c), the word “may” is substituted for the word “shall”.

In subsections (b) and (c), the word “details” is substituted for the word “appoints”, since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-107 designated existing provisions as par. (1), substituted “the applicable minimum number of members” for “five members” in two places, and added par. (2).

1983—Subsec. (a). Pub. L. 98-209 substituted “unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause” for “except for physical disability or as a result of a challenge or by order of the convening authority for good cause”.

1968—Subsec. (a). Pub. L. 90-632, §2(11)(A), substituted “court has been assembled for the trial of the accused” for “accused has been arraigned”.

Subsec. (b). Pub. L. 90-632, §2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90-632, §2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90-632, §2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107-107, set out as a note under section 816 of this title.

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.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

Sec.	Art.	
830.	30.	Charges and specifications.
831.	31.	Compulsory self-incrimination prohibited.
832.	32.	Investigation.
833.	33.	Forwarding of charges.
834.	34.	Advice of staff judge advocate and reference for trial.
835.	35.	Service of charges.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed

forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
830(a)	50:601(a).	May 5, 1950, ch. 169, §1 (Art. 30), 64 Stat. 118.
830(b)	50:601(b).	

In subsection (a), the word “they” is substituted for the words “the same”. The word “commissioned” is inserted for clarity.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
831(a)	50:602(a).	May 5, 1950, ch. 169, §1 (Art 31), 64 Stat. 118.
831(b)	50:602(b).	
831(c)	50:602(c).	
831(d)	50:602(d).	

The word “may” is substituted for the word “shall” throughout the revised section.

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommenda-

tion as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused—

- (1) is present at the investigation;
- (2) is informed of the nature of each uncharged offense investigated; and
- (3) is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b).

(e) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Pub. L. 97-81, §4(a), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 104-106, div. A, title XI, §1131, Feb. 10, 1996, 110 Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
832(a)	50:603(a).	May 5, 1950, ch. 169, §1 (Art. 32), 64 Stat. 118.
832(b)	50:603(b).	
832(c)	50:603(c).	
832(d)	50:603(d).	

In subsection (a), the word “may” is substituted for the word “shall”. The words “consideration of the” and “a recommendation as to” are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word “detailed” is substituted for the word “appointed”, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word “before” is substituted for the words “prior to the time”. The words “of this section” are omitted as surplusage.

In subsection (d), the word “are” is substituted for the words “shall be.” The word “does” is substituted for the words “in any case shall”.

AMENDMENTS

1996—Subsecs. (d), (e). Pub. L. 104-106 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Subsec. (b). Pub. L. 97-81 substituted “The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section” for “Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

§ 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
833	50:604.	May 5, 1950, ch. 169, §1 (Art. 33), 64 Stat. 119.

§ 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

- (1) the specification alleges an offense under this chapter;
- (2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and
- (3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

- (1) expressing his conclusions with respect to each matter set forth in subsection (a); and
- (2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 98-209, §4, Dec. 6, 1983, 97 Stat. 1395.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows for 834(a), 834(b).

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

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, §4(a), substituted "judge advocate" for "judge advocate or legal officer", and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98-209, §4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 835. Art. 35. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90-632, §2(12), Oct. 24, 1968, 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row for 835.

The word "may" is substituted for the word "shall". The word "after" is substituted for the words "subsequent to".

AMENDMENTS

1968—Pub. L. 90-632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

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.

SUBCHAPTER VII—TRIAL PROCEDURE

Table with 3 columns: Sec., Art., Description. Rows 836-854.

AMENDMENTS

1986—Pub. L. 99-661, div. A, title VIII, §802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a.

§ 836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not, except as provided in chapter 47A of this title, be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable, except insofar as applicable to military commissions established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 96-107, title VIII, §801(b), Nov. 9, 1979, 93 Stat. 811; Pub. L. 101-510, div. A, title XIII, §1301(4), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109-366, §4(a)(3), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows for 836(a), 836(b).

In subsection (a), the word "considers" is substituted for the word "deems". The word "may" is substituted for the word "shall".

In subsection (b), the word “under” is substituted for the words “in pursuance of”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-366, §4(a)(3)(A), inserted “, except as provided in chapter 47A of this title,” after “but which may not”.

Subsec. (b). Pub. L. 109-366, §4(a)(3)(B), inserted before period at end “, except insofar as applicable to military commissions established under chapter 47A of this title”.

1990—Subsec. (b). Pub. L. 101-510 struck out “and shall be reported to Congress” after “as practicable”.

1979—Subsec. (a). Pub. L. 96-107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tribunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

§ 837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. 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.

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90-632, §2(13), Oct. 24, 1968, 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
837	50:612.	May 5, 1950, ch. 169, §1 (Art. 37), 64 Stat. 120.

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

AMENDMENTS

1968—Pub. L. 90-632 designated existing provisions as subsec. (a), substituted “military judge” for “law officer”, inserted provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from prohibitions of subsec. (a), and added subsec. (b).

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.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define “reasonably available” for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maxi-

imum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90-632, §2(14), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 97-81, §4(b), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 98-209, §3(e), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
833(a)	50:613(a).	May 5, 1950, ch. 169, §1 (Art. 38), 64 Stat. 120.
833(b)	50:613(b).	
833(c)	50:613(c).	
833(d)	50:613(d).	
833(e)	50:613(e).	

In subsection (b), the word "has" is substituted for the words "shall have". The word "under" is substituted for the words "pursuant to". The word "duly" is omitted as surplusage. The words "detailed" and "who were detailed" are substituted for the word "appointed", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word "considers" is substituted for the words "may deem".

AMENDMENTS

1999—Subsec. (b)(7). Pub. L. 106-65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

1996—Subsec. (b)(7). Pub. L. 104-106 substituted "Committee on Armed Services of the Senate and the Committee on National Security of the House of Represent-

atives" for "Committees on Armed Services of the Senate and House of Representatives".

1983—Subsec. (b)(6). Pub. L. 98-209, §3(e)(1), substituted "the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel" for "a convening authority".

Subsec. (b)(7). Pub. L. 98-209, §3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98-209, §3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981—Subsec. (b). Pub. L. 97-81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the "reasonable availability" of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968—Subsec. (b). Pub. L. 90-632 substituted "military judge or by the president of a court-martial without a military judge" for "president of the court".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on 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.

§ 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.

(b) Proceedings under subsection (a) 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. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29). If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).

(c) 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.

(d) The findings, holdings, interpretations, and other precedents of military commissions under chapter 47A of this title—

(1) may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial under this chapter; and

(2) may not form the basis of any holding, decision, or other determination of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(15), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 101-510, div. A, title V, §541(a), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 109-163, div. A, title V, §556, Jan. 6, 2006, 119 Stat. 3266; Pub. L. 111-84, div. A, title XVIII, §1803(a)(2), Oct. 28, 2009, 123 Stat. 2612.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
839	50:614.	May 5, 1950, ch. 169, §1 (Art. 39), 64 Stat. 121.

The word “When” is substituted for the word “Whenever”. The words “deliberates or votes” are substituted for the words “is to deliberate or vote”. The word “may” is substituted for the word “shall”. The word “shall” is inserted before the words “be in the presence” for clarity.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111-84 added subsec. (d).

2006—Pub. L. 109-163 redesignated concluding provisions of subsec. (a) as subsec. (b), substituted “Proceedings under subsection (a) shall be conducted” for “These proceedings shall be conducted”, inserted at end “If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).”, and redesignated former subsec. (b) as (c).

1990—Subsec. (a). Pub. L. 101-510 inserted at end “These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).”

1968—Pub. L. 90-632 added subsec. (a), designated existing provisions as subsec. (b), substituted “military judge” for “law officer”, and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the

reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-510, div. A, title V, §541(e), Nov. 5, 1990, 104 Stat. 1565, provided that: “The amendments made by subsections (a) through (d) [amending this section and section 841 of this title] shall apply only to a court-martial convened on or after the date of the enactment of this Act [Nov. 5, 1990].”

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.

§ 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(16), 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>
840	50:615.	May 5, 1950, ch. 169, §1 (Art. 40), 64 Stat. 121.

AMENDMENTS

1968—Pub. L. 90-632 inserted reference to military judge.

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.

§ 841. Art. 41. Challenges

(a)(1) 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. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge

(not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(17), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 101-510, div. A, title V, §541(b)-(d), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 111-383, div. A, title X, §1075(b)(13), Jan. 7, 2011, 124 Stat. 4369.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
841(a)	50:616(a).	May 5, 1950, ch. 169, §1
841(b)	50:616(b).	(Art. 41), 64 Stat. 121.

In subsection (a), the word “may” is substituted for the word “shall” before the words “not receive”.

In subsection (b), the word “the” is inserted before the word “trial”. The word “is” is substituted for the words “shall be”. The word “may” is substituted for the word “shall”.

AMENDMENTS

2011—Subsec. (c). Pub. L. 111-383 substituted “trial counsel” for “trail counsel”.

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, de-

fense 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, rape, or rape of a child, 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, 920a, 920b, or 920c of this title (article 120, 120a, 120b, or 120c).

(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, assault with intent to commit murder, voluntary manslaughter, rape, or sodomy, or indecent acts 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 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 specifications (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; Pub. L. 111-383, div. A, title X, §1075(b)(14), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112-81, div. A, title V, §541(d)(1), Dec. 31, 2011, 125 Stat. 1410; Pub. L. 112-239, div. A, title X, §1076(f)(8), Jan. 2, 2013, 126 Stat. 1952.)

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”.

AMENDMENTS

2013—Subsec. (b)(2)(B)(v). Pub. L. 112-239 substituted “Kidnaping,” for “Kidnaping,,”.

2011—Subsec. (b)(2)(B)(i). Pub. L. 112-81, §541(d)(1)(A), substituted “section 920, 920a, 920b, or 920c of this title (article 120, 120a, 120b, or 120c)” for “section 920 of this title (article 120)”.

Subsec. (b)(2)(B)(v). Pub. L. 112-81, §541(d)(1)(B), struck out “indecent assault” after “Kidnaping,” and “or liberties with a child” after “indecent acts”.

Pub. L. 111-383 substituted “Kidnaping, indecent assault,” for “Kidnaping; indecent assault;”.

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

able by death” for “or with any offense punishable by death”.

Pub. L. 109-163, §552(e), substituted “, rape, or rape of a child,” for “or rape.”

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 2011 AMENDMENT

Pub. L. 112-81, div. A, title V, §541(f), Dec. 31, 2011, 125 Stat. 1411, provided that: “The amendments made by this section [enacting sections 920b and 920c of this title and amending this section and sections 918 and 920 of this title] shall take effect 180 days after the date of the enactment of this Act [Dec. 31, 2011] and shall apply with respect to offenses committed on or after such effective date.”

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

Pub. L. 99-661, div. A, title VIII, §805(c), Nov. 14, 1986, 100 Stat. 3908, 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

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

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

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

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 846: Revised section 846, Source (U.S. Code) 50:621, Source (Statutes at Large) 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".

§ 847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

- (1) has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board, or has been duly issued a subpoena duces tecum for an investigation pursuant to section 832(b) of this title (article 32(b));
- (2) has been provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage; and
- (3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the United States. (b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or

in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, board, or convening authority, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 104-106, div. A, title XI, §1111, Feb. 10, 1996, 110 Stat. 461; Pub. L. 109-163, div. A, title X, §1057(a)(5), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 112-81, div. A, title V, §542(a), (b), Dec. 31, 2011, 125 Stat. 1411.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows 847(a)-(d): Revised sections 847(a)-(d), Source (U.S. Code) 50:622(a)-(d), Source (Statutes at Large) May 5, 1950, ch. 169, §1 (Art. 47), 64 Stat. 123.

In subsection (a), the word "Any" is substituted for the word "Every". The word "is" is substituted for the words "shall be deemed".

In subsection (b), the words "named in subsection (a)" are substituted for the words "denounced by this article". The words "Territories, Commonwealths, or" are substituted for the word "Territorial". The words "not more than" are substituted for the words "a period not exceeding".

In subsection (c), the words "It shall be the duty of * * * to" are omitted as surplusage. The words "United States Attorney" are substituted for the words "United States district attorney", to conform to the terminology of section 501 of title 28. The word "shall" is inserted after the word "jurisdiction".

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81, §542(b), substituted "subpoenaed" for "subpenaed" in two places.

Subsec. (a)(1). Pub. L. 112-81, §542(a)(1)(A), substituted "board, or has been duly issued a subpoena duces tecum for an investigation pursuant to section 832(b) of this title (article 32(b));" for "board;".

Subsec. (a)(2). Pub. L. 112-81, §542(a)(1)(B), substituted "provided a means for reimbursement from the Government for fees and mileage" for "duly paid or tendered the fees and mileage of a witness" and inserted "or, in the case of extraordinary hardship, is advanced such fees and mileage" before semicolon.

Subsec. (c). Pub. L. 112-81, §542(a)(2), substituted "board, or convening authority" for "or board".

2006—Subsec. (b). Pub. L. 109-163 substituted "Commonwealths or possessions" for "Territories, Commonwealths, or possessions".

1996—Subsec. (b). Pub. L. 104-106 inserted "indictment or" after "shall be tried on" and substituted "shall be fined or imprisoned, or both, at the court's discretion" for "shall be punished by a fine of not more than \$500, or imprisonment for not more than six months, or both".

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-81, div. A, title V, §542(c), Dec. 31, 2011, 125 Stat. 1411, provided that: "The amendments made by

subsection (a) [amending this section] shall apply with respect to subpoenas issued after the date of the enactment of this Act [Dec. 31, 2011].”

§ 848. Art. 48. Contempts

(a) **AUTHORITY TO PUNISH CONTEMPT.**—A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.

(b) **PUNISHMENT.**—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of \$1,000, or both.

(c) **INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.**—This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111-383, div. A, title V, §542(a), Jan. 7, 2011, 124 Stat. 4218.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
848	50:623.	May 5, 1950, ch. 169, §1 (Art. 48), 64 Stat. 123.

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

AMENDMENTS

2011—Pub. L. 111-383 amended section generally. Prior to amendment, text read as follows: “A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100, or both. This section does not apply to a military commission established under chapter 47A of this title.”

2006—Pub. L. 109-366 inserted last sentence.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title V, §542(b), Jan. 7, 2011, 124 Stat. 4218, provided that: “Section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to acts of contempt committed after the date of the enactment of this Act [Jan. 7, 2011].”

§ 849. Art. 49. Depositions

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate

commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 90-632, §2(20), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98-209, §6(b), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
849(a)	50:624(a).	May 5, 1950, ch. 169, §1 (Art. 49), 64 Stat. 123.
849(b)	50:624(b).	
849(c)	50:624(c).	
849(d)	50:624(d).	
849(e)	50:624(e).	
849(f)	50:624(f).	

In subsection (a), the word “commissioned” is inserted for clarity.

In subsection (d), the word “Commonwealth” is inserted to reflect the present status of Puerto Rico. The words “of Columbia” are inserted after the word “District” for clarity. The words “the distance of” are omitted as surplusage.

In subsections (e) and (f), the words “the requirements of” and the words “of this article” are omitted as surplusage. The word “presented” is substituted for the word “adduced” in subsection (e).

In subsection (f), the word “directs” is substituted for the words “shall have directed”. The words “by law” are omitted as surplusage.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109-163 struck out “Territory,” after “State.”

1983—Subsecs. (d), (f). Pub. L. 98-209 inserted “or, in the case of audiotape, videotape, or similar material, may be played in evidence” after “read in evidence”.

1968—Subsec. (a). Pub. L. 90-632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) 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.

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence. This section does not apply to a military commission established under chapter 47A of this title.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
850(a)	50:625(a).	May 5, 1950, ch. 169, §1
850(b)	50:625(b).	(Art. 50), 64 Stat. 124.
850(c)	50:625(c).	

In subsections (a) and (b), the word “commissioned” is inserted for clarity.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-366 inserted last sentence.

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commis-

sion of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

- (1) guilty;
- (2) not guilty; or
- (3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

- (1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or
- (2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99-661, div. A, title VIII, §802(a)(1), Nov. 14, 1986, 100 Stat. 3905.)

EFFECTIVE DATE

Pub. L. 99-661, div. A, title VIII, §802(b), Nov. 14, 1986, 100 Stat. 3906, provided that: “Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986].”

§ 851. Art. 51. Voting and rulings

(a) 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. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) 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 trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the 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—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 90-632, §2(21), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
851(a)	50:626(a).	May 5, 1950, ch. 169, §1 (Art. 51), 64 Stat. 124.
851(b)	50:626(b).	
851(c)	50:626(c).	

In subsection (a), the words "in each case" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be" in the second sentence. The word "constitutes" is substituted for the words "shall constitute". The word "However," is substituted for the word "but". The word "his" is substituted for the words "any such". The words "the ruling is" are substituted for the words "such ruling be". The words "voice vote" are substituted for the words "vote * * * viva voce".

In subsection (c), the word "must" is substituted for the word "shall" in clause (2), since a condition is prescribed, not a command. The words "United States" are substituted for the word "Government".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-632, §2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90-632, §2(21)(B), substituted "military judge" for "law officer" and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90-632, §2(21)(C), substituted "military judge" for "law officer" and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90-632, §2(21)(D), added subsec. (d).

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.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, 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. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90-632, §2(22), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
852(a)	50:627(a).	May 5, 1950, ch. 169, §1 (Art. 52), 64 Stat. 125.
852(b)	50:627(b).	
852(c)	50:627(c).	

In subsections (a) and (b), the word "may" is substituted for the word "shall".

In subsection (b)(2), the words "for more than" are substituted for the words "in excess of".

In subsection (c), the word “disqualifies” is substituted for the words “shall disqualify”. The word “is” is substituted for the words “shall be” in the last two sentences.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90-632, §2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90-632, §2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

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.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
853	50:628.	May 5, 1950, ch. 169, §1 (Art. 53), 64 Stat. 125.

The word “A” is substituted for the word “Every”.

§ 854. Art. 54. Record of trial

(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.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(e) In the case of a general or special court-martial involving a sexual assault or other offense covered by section 920 of this title (article 120), a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90-632, §2(23), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98-209, §6(c), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 106-398, §1 [[div. A], title V, §555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127; Pub. L. 112-81, div. A, title V, §586(e), Dec. 31, 2011, 125 Stat. 1435.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
854(a)	50:629(a).	May 5, 1950, ch. 169, §1 (Art. 54), 64 Stat. 125.
854(b)	50:629(b).	
854(c)	50:629(c).	

In subsection (a), the word “If” is substituted for the words “In case”. The words “any of those” are substituted for the word “such” in the last sentence.

In subsection (b), the words “and the” are substituted for the word “which” before the word “record”. The words “the matter and shall be authenticated in the manner required by such regulations as” are substituted for the words “such matter and be authenticated in such manner as may be required by regulations which”.

In subsection (c), the words “it is” are inserted before the word “authenticated”.

AMENDMENTS

2011—Subsec. (e). Pub. L. 112-81 added subsec. (e).

2000—Subsec. (c)(1)(B). Pub. L. 106-398 inserted “, confinement for more than six months, or forfeiture of pay for more than six months” after “bad-conduct discharge”.

1983—Subsec. (a). Pub. L. 98-209, §6(c)(1), struck out provision that if the proceedings had 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 could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98-209, §6(c)(2), substituted “the record” for “the record shall contain the matter and”.

Subsecs. (c), (d). Pub. L. 98-209, §6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a). Pub. L. 90-632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §555(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as of April 1, 2000, and shall apply

with respect to charges referred on or after that date to trial by special court-martial.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) 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.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Maximum limits.
856a.	56a.	Sentence of confinement for life without eligibility for parole.
857.	57.	Effective date of sentences.
857a.	57a.	Deferment of sentences.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade upon approval.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

AMENDMENTS

1997—Pub. L. 105-85, div. A, title V, § 581(a)(2), Nov. 18, 1997, 111 Stat. 1760, added item 856a.

1996—Pub. L. 104-106, div. A, title XI, §§ 1122(a)(2), 1123(b), Feb. 10, 1996, 110 Stat. 463, 464, added items 857a and 858b.

1960—Pub. L. 86-633, § 1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
855	50:636.	May 5, 1950, ch. 169, § 1 (Art. 55), 64 Stat. 126.

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

§ 856. Art. 56. Maximum limits

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
856	50:637.	May 5, 1950, ch. 169, § 1 (Art. 56), 64 Stat. 126.

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

§ 856a. Art. 56a. Sentence of confinement for life without eligibility for parole

(a) For any offense for which a sentence of confinement for life may be adjudged, a court-martial may adjudge a sentence of confinement for life without eligibility for parole.

(b) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused’s life unless—

(1) the sentence is set aside or otherwise modified as a result of—

(A) action taken by the convening authority, the Secretary concerned, or another person authorized to act under section 860 of this title (article 60); or

(B) any other action taken during post-trial procedure and review under any other provision of subchapter IX;

(2) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(3) the accused is pardoned.

(Added Pub. L. 105-85, div. A, title V, § 581(a)(1), Nov. 18, 1997, 111 Stat. 1759.)

EFFECTIVE DATE

Pub. L. 105-85, div. A, title V, § 581(b), Nov. 18, 1997, 111 Stat. 1760, provided that: “Section 856a of title 10, United States Code (article 56a of the Uniform Code of Military Justice), as added by subsection (a), shall be applicable only with respect to an offense committed after the date of the enactment of this Act [Nov. 18, 1997].”

§ 857. Art. 57. Effective date of sentences

(a)(1) Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) the date on which the sentence is approved by the convening authority.

(2) On application by an accused, the convening authority may defer a forfeiture of pay or allowances or reduction in grade that would otherwise become effective under paragraph (1)(A) until the date on which the sentence is approved by the convening authority. Such a deferment may be rescinded at any time by the convening authority.

(3) A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect.

(4) In this subsection, the term “convening authority”, with respect to a sentence of a court-martial, means any person authorized to act on the sentence under section 860 of this title (article 60).

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90-632, §2(24), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98-209, §5(f), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 102-484, div. A, title X, §1064, Oct. 23, 1992, 106 Stat. 2505; Pub. L. 104-106, div. A, title XI, §§1121(a), 1123(a)(1), (2), Feb. 10, 1996, 110 Stat. 462-464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
857(a)	50:638(a).	May 5, 1950, ch. 169, §1
857(b)	50:638(b).	(Art. 57), 64 Stat. 126.
857(c)	50:638(c).	

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

In subsection (b), the word “begins” is substituted for the words “shall begin”.

In subsection (c), the word “are” is substituted for the words “shall become”.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106, §1121(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).”

Subsecs. (d), (e). Pub. L. 104-106, §1123(a)(1), (2), redesignated subsecs. (d) and (e) as section 857a(a) and (b), respectively, of this title.

1992—Subsec. (e). Pub. L. 102-484 added subsec. (e).

1983—Subsec. (a). Pub. L. 98-209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

1968—Subsec. (a). Pub. L. 90-632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90-632 inserted reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90-632 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title XI, §1121(b), Feb. 10, 1996, 110 Stat. 462, provided that: “The amendment made by subsection (a) [amending this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) 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.

§ 857a. Art. 57a. Deferment of sentences

(a) 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.

(b)(1) In any case in which a court-martial sentences a person referred to in paragraph (2) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(2) Paragraph (1) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(c) In any case in which a court-martial sentences a person to confinement and the sentence to confinement has been ordered executed, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(Added Pub. L. 90-632, §2(24), Oct. 24, 1968, 82 Stat. 1341, §857(d); amended Pub. L. 102-484, div. A, title X, §1064, Oct. 23, 1992, 106 Stat. 2505; renumbered §857a and amended Pub. L. 104-106, div. A, title XI, §1123(a), Feb. 10, 1996, 110 Stat. 463.)

AMENDMENTS

1996—Pub. L. 104-106 redesignated subsecs. (d) and (e) of section 857 of this title as subsecs. (a) and (b), respectively, of this section, added section catchline, in subsec. (b)(1), substituted “defer” for “postpone”, and added subsec. (c).

1992—Subsec. (b), formerly §857(e). Pub. L. 102-484 added subsec. (e). See 1996 Amendment note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on

or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

§ 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(b) The omission of the words “hard labor” from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
858(a)	50:639(a).	May 5, 1950, ch. 169, §1
858(b)	50:639(b).	(Art. 58), 64 Stat. 126.

In subsection (a), the words “Secretary concerned” are substituted for the words “Department concerned”, since the “Department” as an entity, cannot issue instructions. The word “are” is substituted for the words “shall be”. The words “of Columbia” are inserted after “District” for clarity.

In subsection (b), the word “from” is substituted for the word “in”. The words “does not deprive” are substituted for the words “shall not be construed as depriving”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163 struck out “Territory,” after “State,”.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes—

- (1) a dishonorable or bad-conduct discharge;
- (2) confinement; or
- (3) hard labor without confinement;

reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the

pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86-633, §1(1), July 12, 1960, 74 Stat. 468.)

§ 858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857(a) of this title (article 57(a)) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

- (A) confinement for more than six months or death; or
- (B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860 of this title (article 60) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

(Added Pub. L. 104-106, div. A, title XI, §1122(a)(1), Feb. 10, 1996, 110 Stat. 463; amended Pub. L. 104-201, div. A, title X, §1068(a)(1), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105-85, div. A, title X, §1073(a)(9), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-85 substituted “forfeiture of pay, or of pay and allowances, due that member” for “forfeiture of pay and (if adjudged by a general court-martial) allowances due that member” in first sentence.

1996—Subsec. (a)(1). Pub. L. 104-201, §1068(a)(1)(B), substituted “two-thirds of all pay” for “two-thirds of all pay and allowances” in third sentence.

Pub. L. 104-201, §1068(a)(1)(A), which directed amendment of first sentence by inserting “(if adjudged by a general court-martial)” after “all pay and”, was executed by making the insertion after “of pay and” in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-201, div. A, title X, §1068(a)(2), Sept. 23, 1996, 110 Stat. 2655, provided that: “The amendments

made by paragraph (1) [amending this section] shall take effect as of April 1, 1996, and shall apply to any case in which a sentence is adjudged by a court-martial on or after that date.”

EFFECTIVE DATE

Pub. L. 104-106, div. A, title XI, §1122(b), Feb. 10, 1996, 110 Stat. 463, provided that: “The section (article) added by the amendment made by subsection (a)(1) [this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].”

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.	
859.	59.	Error of law; lesser included offense.
860.	60.	Action by the convening authority.
861.	61.	Waiver or withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Review by a judge advocate.
865.	65.	Disposition of records.
866.	66.	Review by Court of Criminal Appeals.
867.	67.	Review by the Court of Appeals for the Armed Forces.
867a.	67a.	Review by the Supreme Court.
868.	68.	Branch offices.
869.	69.	Review in the office of the Judge Advocate General.
870.	70.	Appellate counsel.
871.	71.	Execution of sentence; suspension of sentence.
872.	72.	Vacation of suspension.
873.	73.	Petition for a new trial.
874.	74.	Remission and suspension.
875.	75.	Restoration.
876.	76.	Finality of proceedings, findings, and sentences.
876a.	76a.	Leave required to be taken pending review of certain court-martial convictions.
876b.	76b.	Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

AMENDMENTS

1996—Pub. L. 104-106, div. A, title XI, §1133(a)(2), Feb. 10, 1996, 110 Stat. 466, added item 876b.

1994—Pub. L. 103-337, div. A, title IX, §924(c)(4)(C), Oct. 5, 1994, 108 Stat. 2832, substituted “Court of Criminal Appeals” for “Court of Military Review” in item 866 and “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in item 867.

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(1), Nov. 5, 1990, 104 Stat. 1718, added item 867a.

1983—Pub. L. 98-209, §§5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400-1402, substituted “Post-trial Procedure and Review of Courts-Martial” for “Review of Courts-Martial” as subchapter heading, “Action by the convening authority” for “Initial action on the record” in item 860, “Waiver or withdrawal of appeal” for “Same—General court-martial records” in item 861, “Appeal by the United States” for “Reconsideration and revision” in item 862, “Review by a judge advocate” for “Approval by the convening authority” in item 864, and “Disposition of records” for “Disposition of records after review by the convening authority” in item 865.

1981—Pub. L. 97-81, §2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 876a.

1968—Pub. L. 90-632, §2(25), Oct. 24, 1968, 82 Stat. 1341, substituted “Court of Military Review” for “board of review” in item 866 (article 66).

§ 859. Art. 59. Error of law; lesser included offense

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

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
859(a)	50:646(a).	May 5, 1950, ch. 169, §1
859(b)	50:646(b).	(Art. 59), 64 Stat. 127.

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

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this sec-

tion. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence. (Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 98-209, § 5(a)(1), Dec. 6, 1983, 97 Stat. 1395; Pub. L. 99-661, div. A, title VIII, § 806(a)-(c), Nov. 14, 1986, 100 Stat. 3908, 3909; Pub. L. 104-106, div. A, title XI, § 1132, Feb. 10, 1996, 110 Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
860	50:647.	May 5, 1950, ch. 169, § 1 (Art. 60), 64 Stat. 127.

The word "a" is substituted for the word "every". The word "by" before the words "any officer" is omitted as surplusage. The word "person" is substituted for the word "officer" before the words "who convened", since, under sections 823 and 824 of this title (articles 23 and 24), noncommissioned officers who are "officers in charge" may convene special and summary courts-martial.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-106 inserted after first sentence "Any such submission shall be in writing."

1986—Subsec. (b)(1). Pub. L. 99-661, § 806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

"(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

"(B) in the case of all other courts-martial, for not more than an additional 10 days."

Subsec. (b)(2). Pub. L. 99-661, § 806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99-661, § 806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after "case", and struck out former par. (3) which read as follows: "In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days."

Subsec. (c)(2). Pub. L. 99-661, § 806(b), struck out "and, if applicable, under subsection (d)," after "under subsection (b)".

Subsec. (d). Pub. L. 99-661, § 806(c), substituted "who may submit any matter in response under subsection (b)" for "who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days."

1983—Pub. L. 98-209 amended section generally, substituting “Action by the convening authority” for “Initial action on the record” as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §806(c) [(d)], Nov. 14, 1986, 100 Stat. 3909, provided that: “The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title.”

Title VIII of Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, §5(b)(1), Dec. 6, 1983, 97 Stat. 1397.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
861	50:648.	May 5, 1950, ch. 169, §1 (Art. 61), 64 Stat. 127.

The word “each” is substituted for the word “every”.

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting “Waiver or withdrawal of appeal” for “Same—General court-martial records” as section

catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification):

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, § 5(c)(1), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 103-337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XI, § 1141(a), Feb. 10, 1996, 110 Stat. 466.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
862(a)	50:649(a).	May 5, 1950, ch. 169, § 1
862(b)	50:649(b).	(Art. 62), 64 Stat. 127.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-106 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.”

1994—Subsec. (b). Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” in two places.

1983—Pub. L. 98-209 amended section generally, substituting “Appeal by the United States” for “Reconsideration and revision” as section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, § 5(d), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 102-484, div. A, title X, § 1065, Oct. 23, 1992, 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
863(a)	50:650(a).	May 5, 1950, ch. 169, § 1
863(b)	50:650(b).	(Art. 63), 64 Stat. 127.

In subsection (a), the words “In such a” are substituted for the words “in which”.

In subsection (b), the word “Each” is substituted for the word “Every”. The word “may” is substituted for the word “shall” in the second sentence.

AMENDMENTS

1992—Pub. L. 102-484 substituted “approved” for “imposed” in second sentence and inserted “approved” before last reference to “sentence” in third sentence.

1983—Pub. L. 98-209 struck out subsec. (a) which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he disapproved the findings without reordering a rehearing, he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted “under this chapter” after “Each rehearing”, and inserted provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate’s review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, §7(a)(1), Dec. 6, 1983, 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
864	50:651.	May 5, 1950, ch. 169, §1 (Art. 64), 64 Stat. 128.

The word "may" is substituted for the word "shall". The word "is" is substituted for the words "shall constitute".

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Review by a judge advocate" for "Approval by the convening authority" in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discretion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90-179, §1(6), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90-632, §2(26), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 96-513, title V, §511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98-209, §6(d)(1), Dec. 6, 1983, 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
865(a)	50:652(a).	May 5, 1950, ch. 169, §1 (Art. 65), 64 Stat. 128.
865(b)	50:652(b).	
865(c)	50:652(c).	

In subsection (b), the word "If" is substituted for the word "Where".

In subsections (a) and (b), the words "send" and "sent" are substituted for the words "forward" and "forwarded", respectively.

In subsection (c), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Disposition of records" for "Disposition of records after review by the convening authority" in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

1980—Subsec. (c). Pub. L. 96-513 substituted "Department of Transportation" for "Department of the Treasury".

1968—Subsec. (b). Pub. L. 90-632 substituted “Court of Military Review” for “board of review” wherever appearing.

1967—Subsec. (c). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 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.

§ 866. Art. 66. Review by Court of Criminal Appeals

(a) Each Judge Advocate General shall establish a Court of Criminal Appeals 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). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals 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 Criminal Appeals 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.

(b) The Judge Advocate General shall refer to a Court of Criminal Appeals the record in each case of trial by court-martial—

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

(c) In a case referred to it, the Court of Criminal Appeals may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in

law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it 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.

(d) If the Court of Criminal Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(g) No member of a Court of Criminal Appeals 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 Criminal Appeals, 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 Criminal Appeals 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90-632, §2(27), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98-209, §§7(b), (c), 10(c)(1), Dec. 6, 1983, 97 Stat. 1402, 1406; Pub. L. 103-337, div. A, title IX, §924(b)(2), (c)(1), (4)(A), Oct. 5, 1994, 108 Stat. 2831, 2832; Pub. L. 104-106, div. A, title XI, §1153, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
866(a)	50:653(a).	May 5, 1950, ch. 169, §1 (Art. 66), 64 Stat. 128.
866(b)	50:653(b).	
866(c)	50:653(c).	
866(d)	50:653(d).	
866(e)	50:653(e).	
866(f)	50:653(f).	

In subsection (a), the word “Each” is substituted for the words “The * * * of each of the armed forces”. The word “must” is substituted for the word “shall” after the word “whom”, since a condition is prescribed, not

a command. The words “of the United States” are omitted as surplusage.

In subsections (a) and (b), the word “commissioned” is inserted before the word “officer”.

In subsection (c), the word “may” is substituted for the word “shall” and for the words “shall have authority to”.

In subsection (e), the words “Secretary concerned” are substituted for the words “Secretary of the Department”.

In subsection (f), the words “of the armed forces” and “proceedings in and before” are omitted as surplusage.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104-106 substituted “Courts of Criminal Appeals” for “Courts of Military Review” in two places.

1994—Pub. L. 103-337, § 924(c)(4)(A), substituted “Court of Criminal Appeals” for “Court of Military Review” in section catchline.

Pub. L. 103-337, § 924(b)(2), substituted “Court of Criminal Appeals” for “Court of Military Review” wherever appearing.

Pub. L. 103-337, § 924(c)(1), substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in subsec. (e).

1983—Subsec. (a). Pub. L. 98-209, § 7(b), inserted provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98-209, § 7(c), amended subsec. (b) generally, designating existing provisions as par. (1), struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98-209, § 10(c)(1), substituted “the Court of Military Appeals, or the Supreme Court” for “or the Court of Military Appeals”.

1968—Subsec. (a). Pub. L. 90-632, § 2(27)(A), (B), substituted “Court of Military Review” for “board of review” in section catchline and, in subsec. (a), substituted “Court of Military Review” for “board of review” as name of reviewing body established by each Judge Advocate General, and inserted provisions setting out procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b) to (e). Pub. L. 90-632, § 2(27)(C), substituted “Court of Military Review” for “board of review” wherever appearing.

Subsec. (f). Pub. L. 90-632, § 2(27)(D), substituted “Courts of Military Review” for “boards of review” in two places.

Subsecs. (g), (h). Pub. L. 90-632, § 2(27)(E), added subsecs. (g) and (h).

CHANGE OF NAME

Pub. L. 103-337, div. A, title IX, § 924(b)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: “Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98-209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) 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.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Pub. L. 90-632, § 3(b), Oct. 24, 1968, 82 Stat. 1343, provided that: “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) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review [now Court of Criminal Appeals].”

§ 867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Criminal Appeals. In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the

Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Pub. L. 88-426, title IV, § 403(j), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90-340, § 1, June 15, 1968, 82 Stat. 178; Pub. L. 90-632, § 2(28), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 96-579, § 12(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 97-81, § 5, Nov. 20, 1981, 95 Stat. 1088; Pub. L. 97-295, § 1(12), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98-209, §§ 7(d), 9(a), 10(c)(2), 13(d), Dec. 6, 1983, 97 Stat. 1402, 1404, 1406, 1408; Pub. L. 100-26, § 7(a)(2), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100-456, div. A, title VII, § 722(a), (c), Sept. 29, 1988, 102 Stat. 2002, 2003; Pub. L. 101-189, div. A, title XIII, § 1301(a), Nov. 29, 1989, 103 Stat. 1569; Pub. L. 103-337, div. A, title IX, § 924(c)(1), (2), (4)(B), Oct. 5, 1994, 108 Stat. 2831, 2832.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
867(a)	50:654(a).	May 5, 1950, ch. 169, § 1
867(b)	50:654(b).	(Art. 67), 64 Stat. 129;
867(c)	50:654(c).	Mar. 2, 1955, ch. 9, § 1(i),
867(d)	50:654(d).	69 Stat. 10.
867(e)	50:654(e).	
867(f)	50:654(f).	
867(g)	50:654(g).	

In subsection (a)(1), the word "is" is substituted for the words "is hereby established". The words "all" and "which shall be" are omitted as surplusage. The word "consists" is substituted for the words "shall consist". The word "civil" is substituted for the word "civilian". The word "may" is substituted for the word "shall" before the words "be appointed". The word "is" is substituted for the word "shall" before the words "any person". The words "is entitled to" are substituted for the words "shall receive". The word "is" is substituted for the words "shall be" in the fourth sentence. The word "may" is substituted for the words "shall have power to * * * to". The word "does" is substituted for the word "shall" in the next to the last sentence. In the last sentence, the words "is entitled * * * to" are substituted for the word "shall". The word "outside" is substituted for the words "at a place other than his official station. The official station of such judges for such purpose shall be". The words "also" and "actually" are omitted as surplusage.

In subsection (a)(2), the words "February 28, 1951," are substituted for the words "the effective date of this subdivision". The word "shall" in the first sentence, and the word "shall" before the word "expire" in the second sentence, are omitted as surplusage. The word "before" is substituted for the words "prior to". The word "may" is substituted for the word "shall" before the words "be appointed".

In subsection (a)(3), the word "for" is substituted for the words "upon the ground of".

In subsection (b), the words "the following cases" are omitted as surplusage.

In subsections (b) and (d), the word "sent" is substituted for the word "forwarded".

In subsection (c), the word "when" is inserted after the word "time". The words "a grant of" are omitted as surplusage.

In subsection (d), the word "may" is substituted for the word "shall" in the first sentence.

In subsection (f), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (g), the words "of the armed forces" are omitted as surplusage. The words "policies as to sentences" are substituted for the words "sentence policies". The word "considered" is substituted for the word "deemed". The words "Secretaries of the military departments, and the Secretary of the Treasury" are substituted for the words "Secretaries of the Departments".

1982 ACT

In subsection (d), the words "Court of Military Review" are substituted for "board of review" because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90-632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

AMENDMENTS

1994—Pub. L. 103-337, § 924(c)(4)(B), substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals" in section catchline.

Pub. L. 103-337, § 924(c)(2), substituted "Court of Criminal Appeals" for "Court of Military Review" wherever appearing in subsecs. (a) to (c) and (e).

Pub. L. 103-337, § 924(c)(1), substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals" wherever appearing.

1989—Pub. L. 101-189 redesignated subsecs. (b) to (f) as (a) to (e), respectively, struck out former subsec. (a) which related to establishment of the United States Court of Military Appeals, and appointment, removal, allowances and compensation, etc., of judges of such court, struck out subsec. (g) which related to a committee required to make annual comprehensive surveys of the operation of this chapter, struck out subsec. (h) which related to review of decisions of the Court of Military Appeals by the Supreme Court, and struck out subsec. (i) which related to annuities for judges and former or retired judges, and survivors and former spouses of judges and former judges.

1988—Subsec. (a)(4). Pub. L. 100-456, § 722(c), inserted "or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5" after "retired pay" in two places.

Subsec. (i). Pub. L. 100-456, § 722(a), added subsec. (i).

1987—Subsec. (g)(1). Pub. L. 100-26 substituted "the Staff Judge Advocate to the Commandant of the Marine Corps" for "the Director, Judge Advocate Division, Headquarters, United States Marine Corps".

1983—Subsec. (a)(3). Pub. L. 98-209, § 13(d), inserted "Circuit" after "District of Columbia".

Subsec. (b)(1). Pub. L. 98-209, § 7(d), struck out "affects a general or flag officer or" before "extends to death".

Subsec. (g). Pub. L. 98-209, § 9(a), designated existing provisions as par. (1), substituted "A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report" for "The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report", and added pars. (2) and (3).

Subsec. (h). Pub. L. 98-209, § 10(c)(2), added subsec. (h).

1982—Subsec. (d). Pub. L. 97-295, § 1(12)(A), substituted "Court of Military Review" for "board of review" after "incorrect in law by the".

Subsec. (g). Pub. L. 97-295, § 1(12)(B), substituted "Secretary of Transportation" for "Secretary of the Treasury" after "military departments, and the".

1981—Subsec. (c). Pub. L. 97-81 substituted provisions authorizing the accused to petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980—Subsec. (a)(1). Pub. L. 96-579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968—Subsec. (a)(1). Pub. L. 90-340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Article I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of \$33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed \$15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90-340 redesignated former par. (3) as (2) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90-340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90-340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90-632 substituted "Court of Military Review" for "board of review" wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88-426 increased salary of judges from \$25,500 to \$33,000.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. A, title VII, § 722(d), Sept. 29, 1988, 102 Stat. 2003, provided that: "Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the

United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98-209 effective Dec. 6, 1983, and amendment by sections 7(d) and 10(c)(2) of Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98-209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after that date, see section 7(a), (b)(5) of Pub. L. 97-81, set out as an Effective Date note under section 706 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.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88-426, see section 501 of Pub. L. 88-426.

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 98-209, §9(b), Dec. 6, 1983, 97 Stat. 1404, as amended by Pub. L. 98-525, title XV, §1521, Oct. 19, 1984, 98 Stat. 2628, directed Secretary of Defense to establish a commission to study the sentencing authority, jurisdiction, tenure, and retirement system of military judges, and to report, not later than Dec. 15, 1984, its findings and recommendations to committees of Congress and to the committee established under former section 867(g) of this title.

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Pub. L. 96-579, §12(b), Dec. 23, 1980, 94 Stat. 3369, provided that the term of office of a judge of United States Court of Military Appeals serving on such court on Dec. 23, 1980, expire (1) on the date the term of such judge would have expired under the law in effect on the day before Dec. 23, 1980, or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Pub. L. 90-340, §2, June 15, 1968, 82 Stat. 178, provided that: "The United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all pur-

poses, be a judge of the United States Court of Military Appeals under this Act.”

SALARY INCREASES

1987—Salaries of judges increased to \$95,000 per annum, on recommendation of President, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to \$57,500 per annum, on recommendation of President, see note set out under section 358 of Title 2.

1969—Salaries of judges increased from \$33,000 to \$42,500 per annum, commencing first day of pay period which begins after Feb. 14, 1969, on recommendation of President, see note set out under section 358 of Title 2.

EXECUTIVE ORDER NO. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added Pub. L. 101-189, div. A, title XIII, §1301(b), Nov. 29, 1989, 103 Stat. 1569; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in two places.

§ 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 Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals 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 Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90-632, §2(29), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, §924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
868	50:655.	May 5, 1950, ch. 169, §1 (Art. 68), 64 Stat. 130.

The word “considers” is substituted for the word “deems”. The word “may” is substituted for the words “shall be empowered to”. The word “respective” is inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” wherever appearing.

1968—Pub. L. 90-632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted “Court of Military Review” for “board of review” as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

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.

§ 869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, 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, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when 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. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(d) A Court of Criminal Appeals may review, under section 866 of this title (article 66)—

(1) any court-martial case which (A) is subject to action by the Judge Advocate General under this section, and (B) is sent to the Court of Criminal Appeals by order of the Judge Advocate General; and

(2) any action taken by the Judge Advocate General under this section in such case.

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under this section, the Court may take action only with respect to matters of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90-632, §2(30), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 97-81, §6, Nov. 20, 1981, 95 Stat. 1089; Pub. L. 98-209, §7(e)(1), Dec. 6, 1983, 97 Stat. 1402; Pub. L. 101-189, div. A, title XIII, §§1302(a), 1304(b)(1), Nov. 29, 1989, 103 Stat. 1576, 1577; Pub. L. 103-337, div. A, title IX, §924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
869	50:656.	May 5, 1950, ch. 169, §1 (Art. 69), 64 Stat. 130.

The word “may” is substituted for the word “will”. The word “under” is substituted for the words “pursuant to the provisions of”.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” wherever appearing.

1989—Subsec. (a). Pub. L. 101-189, §1304(b)(1), which directed amendment of subsec. (a) by striking “section 867(b)(2) of this title (article 67(b)(2))” in the third sentence and inserting in lieu thereof “section 867(a)(2) of this title (article 67(a)(2))”, could not be executed because of the intervening amendment by Pub. L. 101-189, §1302(a)(1), which struck out the third sentence, see below.

Pub. L. 101-189, §1302(a)(1), struck out the third sentence, which read as follows: “If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).”

Subsecs. (d), (e). Pub. L. 101-189, §1302(a)(2), added subsecs. (d) and (e).

1983—Pub. L. 98-209 amended section generally. Prior to amendment section provided that every record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General; that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could 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; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

1981—Pub. L. 97-81 inserted provision that, when a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time.

1968—Pub. L. 90-632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-189, div. A, title XIII, §1302(b), Nov. 29, 1989, 103 Stat. 1576, provided that: “Subsection (e) of section 869 of title 10, United States Code, as added by subsection (a), shall apply with respect to cases in which a finding of guilty is adjudged by a general court-martial after the date of the enactment of this Act [Nov. 29, 1989].”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 effective at end of 60-day period beginning on Nov. 20, 1981, see section 7(a) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective Oct. 24, 1968, see section 4(b) of Pub. L. 90-632, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Pub. L. 98-209, §7(e)(2), Dec. 6, 1983, 97 Stat. 1403, provided that the two-year period specified under the second sentence of subsec. (b) of this section did not apply to any application filed in the office of the appropriate Judge Advocate General on or before Oct. 1, 1983, and that the application in such a case would be considered in the same manner and with the same effect as if such two-year period had not been enacted.

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more

commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90-632, §2(31), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98-209, §10(c)(3), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
870(a)	50:657(a).	May 5, 1950, ch. 169, §1 (Art. 70), 64 Stat. 130.
870(b)	50:657(b).	
870(c)	50:657(c).	
870(d)	50:657(d).	
870(e)	50:657(e).	

In subsection (a), the word “detail” is substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense. The word “commissioned” is inserted for clarity. The word “are” is substituted for the words “shall be”. The words “the provisions of” are omitted as surplusage.

In subsections (b) and (c), the word “shall” is substituted for the words “It shall be the duty of * * * to”.

In subsection (c)(3), the word “sent” is substituted for the word “transmitted”.

In subsection (d), the word “has” is substituted for the words “shall have”.

In subsection (e), the word “directs” is substituted for the words “shall direct”.

AMENDMENTS

1994—Subsecs. (b) to (d). Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” and “Court of Appeals for the Armed Forces” for “Court of Military Appeals” wherever appearing.

1983—Subsec. (b). Pub. L. 98-209, §10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98-209, §10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90-632 substituted “Court of Military Review” for “board of review” wherever appearing.

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.

§ 871. Art. 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.

(b) If in the case of a commissioned officer, cadet, or midshipman, 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 Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit. In time of war or national emergency he 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.

(c)(1) If a sentence extends to death, 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 section 861 of this title (article 61), that part of the sentence extending to death, 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 death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Criminal Appeals and—

(A) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces 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 Court of Appeals for the Armed Forces; or

(C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(ii) such a petition is rejected by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(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 section 861 of this title (article 61), 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 section 864 of this title (article 64) 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 section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part thereof, except a death sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90-632, §2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98-209, §5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
871(a)	50:658(a).	May 5, 1950, ch. 169, §1 (Art. 71), 64 Stat. 131.
871(b)	50:658(b).	
871(c)	50:658(c).	
871(d)	50:658(d).	

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

In subsection (b), the word “commissioned” is inserted for clarity. The word “may” is substituted for the word “shall” in the first sentence. The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The words “who is” are omitted as surplusage.

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

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” and “Court of Appeals for the Armed Forces” for “Court of Military Appeals” wherever appearing.

1983—Subsec. (a). Pub. L. 98-209, §5(e)(1), amended subsec. (a) generally, substituting provision that part of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98-209, §5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman, the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a gen-

eral or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98-209, §5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: “No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.”

Subsec. (d). Pub. L. 98-209, §5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: “All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.”

1968—Subsec. (c). Pub. L. 90-632, §2(32)(A), substituted “Court of Military Review” for “board of review”.

Subsec. (d). Pub. L. 90-632, §2(32)(B), inserted reference to deferred court-martial sentences.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendments 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.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(a)	50:659(a).	May 5, 1950, ch. 169, §1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(c)	50:659(c).	

In subsection (a), the word “Before” is substituted for the words “Prior to”.

In subsection (b), the words “be effective * * * to” are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word “is” is substituted for the words “shall * * * be” in the last sentence. The word “sent” is substituted for the word “forwarded”. The words “Secretary concerned” are substituted for the words “Secretary of the Department”.

§ 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 Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90-632, §2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873	50:660.	May 5, 1950, ch. 169, §1 (Art. 73), 64 Stat. 132.

The words “the ground” are substituted for the word “grounds”. The words “as the case may be” are substituted for the word “respectively”, since the prescribed action is alternative, not distributive.

AMENDMENTS

1994—Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” and “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1968—Pub. L. 90-632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement

for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 106-398, §1 [[div. A], title V, §553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125; Pub. L. 107-107, div. A, title X, §1048(a)(8), Dec. 28, 2001, 115 Stat. 1223.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
874(a)	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

In subsections (a) and (b), the words “Secretary concerned” are substituted for the words “Secretary of the Department”.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107 inserted “that is adjudged for an offense committed after October 29, 2000” after “a sentence of confinement for life without eligibility for parole”.

2000—Subsec. (a). Pub. L. 106-398 inserted at end “However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125, provided that: “The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000].”

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that

former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
875(a)	50:662(a).	May 5, 1950, ch. 169, §1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word "If" is substituted for the word "Where". The word "imposed" is substituted for the word "sustained". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "issue" is substituted for the word "issuance". The word "commissioned" is inserted for clarity. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position". The word "receive" is omitted as surplusage.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2(b) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
876	50:663.	May 5, 1950, ch. 169, §1 (Art. 76), 64 Stat. 132.

The word "under" is substituted for the words "pursuant to". The word "are" is substituted for the words "shall be". The words "Secretary concerned" are substituted for the words "Secretary of a Department".

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97-81, §2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98-209, §5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983—Pub. L. 98-209 substituted "under section 860 of this title (article 60)" for "under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction" and "by the officer exercising general court-martial jurisdiction", respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97-81, set out as a note under section 706 of this title.

§ 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's men-

tal condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hos-

pitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added Pub. L. 104-106, div. A, title XI, § 1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)

EFFECTIVE DATE

Pub. L. 104-106, div. A, title XI, § 1133(c), Feb. 10, 1996, 110 Stat. 466, provided that: "Section 876b of title 10, United States Code (article 76b of the Uniform Code of Military Justice), as added by subsection (a), shall take effect at the end of the six-month period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply with respect to charges referred to courts-martial after the end of that period."

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.	
877.	77.	Principals.
878.	78.	Accessory after the fact.
879.	79.	Conviction of lesser included offense.
880.	80.	Attempts.
881.	81.	Conspiracy.
882.	82.	Solicitation.
883.	83.	Fraudulent enlistment, appointment, or separation.
884.	84.	Unlawful enlistment, appointment, or separation.
885.	85.	Desertion.
886.	86.	Absence without leave.
887.	87.	Missing movement.
888.	88.	Contempt toward officials.
889.	89.	Disrespect toward superior commissioned officer.
890.	90.	Assaulting or willfully disobeying superior commissioned officer.
891.	91.	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
892.	92.	Failure to obey order or regulation.
893.	93.	Cruelty and maltreatment.
894.	94.	Mutiny or sedition.
895.	95.	Resistance, flight, breach of arrest, and escape.
896.	96.	Releasing prisoner without proper authority.
897.	97.	Unlawful detention.

- Sec. Art.
- 898. 98. Noncompliance with procedural rules.
- 899. 99. Misbehavior before the enemy.
- 900. 100. Subordinate compelling surrender.
- 901. 101. Improper use of countersign.
- 902. 102. Forcing a safeguard.
- 903. 103. Captured or abandoned property.
- 904. 104. Aiding the enemy.
- 905. 105. Misconduct as prisoner.
- 906. 106. Spies.
- 906a. 106a. Espionage.
- 907. 107. False official statements.
- 908. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition.
- 909. 109. Property other than military property of United States—Waste, spoilage, or destruction.
- 910. 110. Improper hazarding of vessel.
- 911. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel.
- 912. 112. Drunk on duty.
- 912a. 112a. Wrongful use, possession, etc., of controlled substances.
- 913. 113. Misbehavior of sentinel.
- 914. 114. Dueling.
- 915. 115. Malingering.
- 916. 116. Riot or breach of peace.
- 917. 117. Provoking speeches or gestures.
- 918. 118. Murder.
- 919. 119. Manslaughter.
- 919a. 119a. Death or injury of an unborn child.
- 920. 120. Rape and sexual assault generally.
- 920a. 120a. Stalking.
- 920b. 120b. Rape and sexual assault of a child.
- 920c. 120c. Other sexual misconduct.
- 921. 121. Larceny and wrongful appropriation.
- 922. 122. Robbery.
- 923. 123. Forgery.
- 923a. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds.
- 924. 124. Maiming.
- 925. 125. Sodomy.
- 926. 126. Arson.
- 927. 127. Extortion.
- 928. 128. Assault.
- 929. 129. Burglary.
- 930. 130. Housebreaking.
- 931. 131. Perjury.
- 932. 132. Frauds against the United States.
- 933. 133. Conduct unbecoming an officer and a gentleman.
- 934. 134. General article.

AMENDMENTS

2011—Pub. L. 112-81, div. A, title V, §541(e), Dec. 31, 2011, 125 Stat. 1410, substituted “Rape and sexual assault generally” for “Rape, sexual assault, and other sexual misconduct” in item 920 and added items 920b and 920c.

2006—Pub. L. 109-163, div. A, title V, §552(a)(2), Jan. 6, 2006, 119 Stat. 3262, substituted “Rape, sexual assault, and other sexual misconduct” for “Rape and carnal knowledge” in item 920.

Pub. L. 109-163, div. A, title V, §551(a)(2), Jan. 6, 2006, 119 Stat. 3256, added item 920a.

2004—Pub. L. 108-212, §3(b), Apr. 1, 2004, 118 Stat. 570, added item 919a.

1997—Pub. L. 105-85, div. A, title X, §1073(a)(10), Nov. 18, 1997, 111 Stat. 1900, struck out “Art.” before “95” in item 895.

1996—Pub. L. 104-106, div. A, title XI, §1112(b), Feb. 10, 1996, 110 Stat. 461, inserted “flight,” after “Resistance,” in item 895.

1992—Pub. L. 102-484, div. A, title X, §1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted “operation of a vehicle, aircraft, or vessel” for “driving” in item 911.

1985—Pub. L. 99-145, title V, §534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98-209, §8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87-385, §1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

§ 877. Art. 77. Principals

Any person punishable under this chapter who—

- (1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or
- (2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
877	50:671.	May 5, 1950, ch. 169, §1 (Art. 77), 64 Stat. 134.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
878	50:672.	May 5, 1950, ch. 169, §1 (Art. 78), 64 Stat. 134.

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
879	50:673.	May 5, 1950, ch. 169, §1 (Art. 79), 64 Stat. 134.

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
880(a)	50:674(a).	May 5, 1950, ch. 169, § 1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words “even though” are substituted for the word “but” for clarity.

§ 881. Art. 81. Conspiracy

(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66; Pub. L. 109-366, § 4(b), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
881	50:675.	May 5, 1950, ch. 169, § 1 (Art. 81), 64 Stat. 134.

The words “or persons” are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

AMENDMENTS

2006—Pub. L. 109-366 designated existing provisions as subsec. (a) and added subsec. (b).

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
882(a)	50:676(a).	May 5, 1950, ch. 169, § 1 (Art. 82), 64 Stat. 134.
882(b)	50:676(b).	

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
883	50:677.	May 5, 1950, ch. 169, § 1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words “means of” are omitted as surplusage.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
884	50:678.	May 5, 1950, ch. 169, § 1 (Art. 84), 64 Stat. 135.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or

proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
885(a)	50:679(a).	May 5, 1950, ch. 169, §1 (Art. 85), 64 Stat. 135.
885(b)	50:679(b).	
885(c)	50:679(c).	

In subsection (a), the word “unit” is substituted for the words “place of service” to conform to clause (2) of this section and section 886(3) of this title. The word “proper” is omitted as surplusage.

In subsection (b), the word “commissioned” is inserted for clarity. The word “before” is substituted for the words “prior to”. The words “its acceptance” are substituted for the words “the acceptance of the same”. The words “after tender of” are substituted for the words “having tendered” for clarity. The word “due” is omitted as surplusage.

In subsection (c), the words “attempt to desert” are substituted for the words “attempted desertion”.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

- (1) fails to go to his appointed place of duty at the time prescribed;
- (2) goes from that place; or
- (3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
886	50:680.	May 5, 1950, ch. 169, §1 (Art. 86), 64 Stat. 135.

The words “proper” and “other” are omitted as surplusage.

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
887	50:681.	May 5, 1950, ch. 169, §1 (Art. 87), 64 Stat. 135.

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice

President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 96-513, title V, §511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
888	50:682.	May 5, 1950, ch. 169, §1 (Art. 88), 64 Stat. 135.

The word “commissioned” is inserted for clarity. The words “the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession” are substituted for the words “Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States”.

AMENDMENTS

2006—Pub. L. 109-163 struck out “Territory,” after “State.”

2002—Pub. L. 107-296 substituted “Secretary of Homeland Security” for “Secretary of Transportation”.

1980—Pub. L. 96-513 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
889	50:683.	May 5, 1950, ch. 169, §1 (Art. 89), 64 Stat. 135.

The word “commissioned” is inserted for clarity.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

- (1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or
- (2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment

as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
890	50:684.	May 5, 1950, ch. 169, § 1 (Art. 90), 64 Stat. 135.

The word “commissioned” is inserted for clarity.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
891	50:685.	May 5, 1950, ch. 169, § 1 (Art. 91), 64 Stat. 136.

The word “member” is substituted for the word “person”.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
892	50:686.	May 5, 1950, ch. 169, § 1 (Art. 92), 64 Stat. 136.

The word “order” is substituted for the word “same”.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
893	50:687.	May 5, 1950, ch. 169, § 1 (Art. 93), 64 Stat. 136.

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
894(a)	50:688(a).	May 5, 1950, ch. 169, § 1 (Art. 94), 64 Stat. 136.
894(b)	50:688(b).	

In subsection (a)(1) and (2), the words “or persons” are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word “a” is substituted for the words “an offense of”. The words “commissioned officer” are inserted after the word “superior”, for clarity.

§ 895. Art. 95. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69; Pub. L. 104-106, div. A, title XI, § 1112(a), Feb. 10, 1996, 110 Stat. 461.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
895	50:689.	May 5, 1950, ch. 169, § 1 (Art. 95), 64 Stat. 136.

AMENDMENTS

1996—Pub. L. 104-106 inserted “flight,” after “Resistance,” in section catchline and amended text generally. Prior to amendment, text read as follows: “Any person

subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.”

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 896, 50:690, May 5, 1950, ch. 169, §1 (Art. 96), 64 Stat. 136.

The words “whether or not the prisoner was committed in strict compliance with law” are substituted for the word “duly”, to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 897, 50:691, May 5, 1950, ch. 169, §1 (Art. 97), 64 Stat. 137.

§ 898. Art. 98. Noncompliance with procedural rules

- Any person subject to this chapter who— (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or (2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 898, 50:692, May 5, 1950, ch. 169, §1 (Art. 98), 64 Stat. 137.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

- (1) runs away; (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend; (3) through disobedience, neglect, or intentional misconduct endangers the safety of any

such command, unit, place, or military property;

- (4) casts away his arms or ammunition; (5) is guilty of cowardly conduct; (6) quits his place of duty to plunder or pillage; (7) causes false alarms in any command, unit, or place under control of the armed forces; (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or (9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 899, 50:693, May 5, 1950, ch. 169, §1 (Art. 99), 64 Stat. 137.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 900, 50:694, May 5, 1950, ch. 169, §1 (Art. 100), 64 Stat. 137.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 901, 50:695, May 5, 1950, ch. 169, §1 (Art. 101), 64 Stat. 137.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
902	50:696.	May 5, 1950, ch. 169, §1 (Art. 102), 64 Stat. 137.

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—
(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
903(a)	50:697(a).	May 5, 1950, ch. 169, §1 (Art. 103), 64 Stat. 138.
903(b)	50:697(b).	

In subsection (b)(1), the words “of this section” are omitted as surplusage.

§ 904. Art. 104. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
904	50:698.	May 5, 1950, ch. 169, §1 (Art. 104), 64 Stat. 138.

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence in concluding provisions.

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper

authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
905	50:699.	May 5, 1950, ch. 169, §1 (Art. 105), 64 Stat. 138.

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
906	50:700.	May 5, 1950, ch. 169, §1 (Art. 106), 64 Stat. 138.

The words “of the United States” are omitted as surplusage.

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F.R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indi-

rectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

- (2) An entity referred to in paragraph (1) is—
 (A) a foreign government;
 (B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or
 (C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

- (A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and
 (B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

- (A) evidence introduced on the issue of guilt or innocence;
 (B) evidence introduced during the sentencing proceeding; or
 (C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

- (1) The accused has been convicted of another offense involving espionage or treason

for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99-145, title V, §534(a), Nov. 8, 1985, 99 Stat. 634.)

§ 907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
907	50:701.	May 5, 1950, ch. 169, §1 (Art. 107), 64 Stat. 138.

The word “it” is substituted for the words “the same”.

§ 908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

- (1) sells or otherwise disposes of;
 (2) willfully or through neglect damages, destroys, or loses; or
 (3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
908	50:702.	May 5, 1950, ch. 169, §1 (Art. 108), 64 Stat. 138.

§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
909	50:703.	May 5, 1950, ch. 169, §1 (Art. 109), 64 Stat. 138.

§ 910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
910(a)	50:704(a).	May 5, 1950, ch. 169, § 1
910(b)	50:704(b).	(Art. 110), 64 Stat. 139.

§ 911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel

(a) Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b),

shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of—

(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or

(ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.10 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

(4) In this subsection:

(A) The term "blood alcohol content limit" means the amount of alcohol concentration in

a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term "State" includes each of those jurisdictions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 99-570, title III, §3055, Oct. 27, 1986, 100 Stat. 3207-76; Pub. L. 102-484, div. A, title X, §1066(a)(1), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 103-160, div. A, title V, §576(a), Nov. 30, 1993, 107 Stat. 1677; Pub. L. 107-107, div. A, title V, §581, Dec. 28, 2001, 115 Stat. 1123; Pub. L. 108-136, div. A, title V, §552, Nov. 24, 2003, 117 Stat. 1481.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
911	50:705.	May 5, 1950, ch. 169, § 1 (Art. 111), 64 Stat. 139.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108-136, §552(1), substituted "is equal to or exceeds" for "is in excess of".

Subsec. (b)(1)(A). Pub. L. 108-136, §552(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State and subject to the maximum blood alcohol content limit specified in paragraph (3)."

Subsec. (b)(1)(B), (3). Pub. L. 108-136, §552(2)(B), struck out "maximum" before "blood alcohol content specified" in par. (1)(B) and before "blood alcohol content" in par. (3).

Subsec. (b)(4)(A). Pub. L. 108-136, §552(2)(C), substituted "amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited." for "maximum permissible alcohol concentration in a person's blood or breath for purposes of operation or control of a vehicle, aircraft, or vessel."

2001—Pub. L. 107-107 designated existing provisions as subsec. (a), substituted "in excess of the applicable limit under subsection (b)" for "0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis" in par. (2), and added subsec. (b).

1993—Par. (2). Pub. L. 103-160 inserted "or more" after "0.10 grams" in two places.

1992—Pub. L. 102-484 substituted "operation of a vehicle, aircraft, or vessel" for "driving" in section catchline and amended text generally. Prior to amendment, text read as follows: "Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct."

1986—Pub. L. 99-570 inserted "or while impaired by a substance described in section 912a(b) of this title (article 112a(b))."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, div. A, title V, §576(b), Nov. 30, 1993, 107 Stat. 1677, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendment to section 911 of title 10, United States Code, made by section 1066(a)(1) of Public Law 102-484 on October 23, 1992."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

§ 912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
912	50:706.	May 5, 1950, ch. 169, §1 (Art. 112), 64 Stat. 139.

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98-209, §8(a), Dec. 6, 1983, 97 Stat. 1403.)

EFFECTIVE DATE

Section effective first day of eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98-209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100-180, div. A, title XII, §1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

“(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

“(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

“(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

“(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

“(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

“(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

“(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

“(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

“(f) REPORT.—Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section.”

§ 913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
913	50:707.	May 5, 1950, ch. 169, §1 (Art. 113), 64 Stat. 139.

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
914	50:708.	May 5, 1950, ch. 169, §1 (Art. 114), 64 Stat. 139.

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

- (1) feigns illness, physical disablement, mental lapse or derangement; or
 (2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.
 (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
915	50:709.	May 5, 1950, ch. 169, §1 (Art. 115), 64 Stat. 139.

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
916	50:710.	May 5, 1950, ch. 169, §1 (Art. 116), 64 Stat. 139.

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
917	50:711.	May 5, 1950, ch. 169, §1 (Art. 117), 64 Stat. 139.

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or
- (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 102-484, div. A, title X, §1066(b), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 109-163, div. A, title V, §552(d), Jan. 6, 2006, 119 Stat. 3263; Pub. L. 112-81, div. A, title V, §541(d)(2), Dec. 31, 2011, 125 Stat. 1410.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
918	50:712.	May 5, 1950, ch. 169, §1 (Art. 118), 64 Stat. 140.

The words “of this section” are omitted as surplusage.

AMENDMENTS

2011—Par. (4). Pub. L. 112-81 substituted “sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child,” for “aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child.”

2006—Par. (4). Pub. L. 109-163 substituted “rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child,” for “rape,”.

1992—Par. (3). Pub. L. 102-484 substituted “another” for “others”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112-81, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109-163, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

§ 919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

- (1) by culpable negligence; or
- (2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
919(a)	50:713(a).	May 5, 1950, ch. 169, §1 (Art. 119), 64 Stat. 140.
919(b)	50:713(b).	

The word “named” is substituted for the word “specified”.

§ 919a. Art. 119a. Death or injury of an unborn child

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the pro-

visions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

(c) Nothing in this section shall be construed to permit the prosecution—

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term “unborn child” means a child in utero, and the term “child in utero” or “child, who is in utero” means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

(Added Pub. L. 108-212, §3(a), Apr. 1, 2004, 118 Stat. 569.)

§ 920. Art. 120. Rape and sexual assault generally

(a) RAPE.—Any person subject to this chapter who commits a sexual act upon another person by—

(1) using unlawful force against that other person;

(2) using force causing or likely to cause death or grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) first rendering that other person unconscious; or

(5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT.—Any person subject to this chapter who—

(1) commits a sexual act upon another person by—

(A) threatening or placing that other person in fear;

(B) causing bodily harm to that other person;

(C) making a fraudulent representation that the sexual act serves a professional purpose; or

(D) inducing a belief by any artifice, pretense, or concealment that the person is another person;

(2) commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—

(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;

is guilty of sexual assault and shall be punished as a court-martial may direct.

(c) AGGRAVATED SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(d) ABUSIVE SEXUAL CONTACT.—Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) DEFENSES.—An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) DEFINITIONS.—In this section:

(1) SEXUAL ACT.—The term “sexual act” means—

(A) contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the vulva or anus or mouth, of another by any

part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) **SEXUAL CONTACT.**—The term “sexual contact” means—

(A) touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person; or

(B) any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person.

Touching may be accomplished by any part of the body.

(3) **BODILY HARM.**—The term “bodily harm” means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.

(4) **GRIEVOUS BODILY HARM.**—The term “grievous bodily harm” means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(5) **FORCE.**—The term “force” means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(6) **UNLAWFUL FORCE.**—The term “unlawful force” means an act of force done without legal justification or excuse.

(7) **THREATENING OR PLACING THAT OTHER PERSON IN FEAR.**—The term “threatening or placing that other person in fear” means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(8) **CONSENT.**—

(A) The term “consent” means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or

under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).

(C) Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person’s actions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 102-484, div. A, title X, §1066(c), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 104-106, div. A, title XI, §1113, Feb. 10, 1996, 110 Stat. 462; Pub. L. 109-163, div. A, title V, §552(a)(1), Jan. 6, 2006, 119 Stat. 3256; Pub. L. 112-81, div. A, title V, §541(a), Dec. 31, 2011, 125 Stat. 1404; Pub. L. 112-239, div. A, title X, §1076(f)(9), Jan. 2, 2013, 126 Stat. 1952.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
920(a)	50:714(a).	May 5, 1950, ch. 169, §1
920(b)	50:714(b).	(Art. 120), 64 Stat. 140.
920(c)	50:714(c).	

In subsection (c), the words “either of” are inserted for clarity.

AMENDMENTS

2013—Subsec. (g)(7). Pub. L. 112-239 struck out second period at end.

2011—Pub. L. 112-81, §541(a)(11), substituted “Art. 120. Rape and sexual assault generally” for “Art. 120. Rape, sexual assault, and other sexual misconduct” in section catchline.

Subsec. (a). Pub. L. 112-81, §541(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to rape.

Subsec. (b). Pub. L. 112-81, §541(a)(3), redesignated subsec. (c) as (b) and amended it generally. Pub. L. 112-81, §541(a)(2), struck out subsec. (b) which related to rape of a child.

Subsec. (c). Pub. L. 112-81, §541(a)(4), redesignated subsec. (e) as (c) and substituted “commits” for “engages in” and “upon” for “with”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 112-81, §541(a)(5), redesignated subsec. (h) as (d) and substituted “commits” for “engages in”, “upon” for “with”, and “subsection (b) (sexual assault)” for “subsection (c) (aggravated sexual assault)”.

Pub. L. 112-81, §541(a)(2), struck out subsec. (d) which related to aggravated sexual assault of a child.

Subsec. (e). Pub. L. 112-81, §541(a)(7), redesignated subsec. (p) as (e) and substituted “a person made” for “the accused made” and “the person actually” for “the accused actually” and inserted “or had the ability to carry out the threat” before period at end. Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 112-81, §541(a)(8), redesignated subsec. (q) as (f) and amended it generally.

Pub. L. 112-81, §541(a)(2), struck out subsec. (f) which related to aggravated sexual abuse of a child.

Subsec. (g). Pub. L. 112-81, §541(a)(2), (10), redesignated subsec. (t) as (g) and struck out former subsec. (g) which related to aggravated sexual contact with a child.

Subsec. (g)(1)(A). Pub. L. 112-81, §541(a)(10)(A)(i), inserted “or anus or mouth” after “vulva”.

Subsec. (g)(1)(B). Pub. L. 112-81, §541(a)(10)(A)(ii), substituted “vulva or anus or mouth,” for “genital opening” and “any part of the body” for “a hand or finger”.

Subsec. (g)(2). Pub. L. 112-81, §541(a)(10)(B), amended par. (2) generally. Prior to amendment, par. (2) defined “sexual contact”.

Subsec. (g)(3). Pub. L. 112-81, §541(a)(10)(D), redesignated par. (8) as (3) and inserted “, including any non-

consensual sexual act or nonconsensual sexual contact” before period at end. Former par. (3) redesignated (4).

Subsec. (g)(4). Pub. L. 112–81, §541(a)(10)(E), struck out at end “It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.”

Pub. L. 112–81, §541(a)(10)(C), redesignated par. (3) as (4) and struck out former par. (4) which defined “dangerous weapon or object”.

Subsec. (g)(5). Pub. L. 112–81, §541(a)(10)(F), (H), added par. (5) and struck out former par. (5) which defined “force”.

Subsec. (g)(6). Pub. L. 112–81, §541(a)(10)(H), added par. (6). Former par. (6) redesignated (7).

Subsec. (g)(7). Pub. L. 112–81, §541(a)(10)(G), (I), redesignated par. (6) as (7), struck out “under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact),” after “person in fear”, and substituted “the wrongful action contemplated by the communication or action.” for “death, grievous bodily harm, or kidnapping”.

Pub. L. 112–81, §541(a)(10)(F), struck out par. (7) which defined “threatening or placing that other person in fear”.

Subsec. (g)(8). Pub. L. 112–81, §541(a)(10)(K), redesignated par. (14) as (8), designated introductory provisions as subpar. (A), in first sentence, struck out “words or overt acts indicating” before “a freely given” and “sexual” before “conduct”, in third sentence, struck out “accused’s” before “use of force”, in fourth sentence, inserted “or social or sexual” before “relationship” and struck out “sexual” before “conduct” and last sentence, including subpars. (A) and (B), which related to a person who cannot consent to sexual activity, and added subpars. (B) and (C). Former par. (8) redesignated (3).

Subsec. (g)(9) to (13). Pub. L. 112–81, §541(a)(10)(J), struck out pars. (9) to (13) which defined “child”, “lewd act”, “indecent liberty”, “indecent conduct”, and “act of prostitution”, respectively.

Subsec. (g)(14). Pub. L. 112–81, §541(a)(10)(K), redesignated par. (14) as (8).

Subsec. (g)(15), (16). Pub. L. 112–81, §541(a)(10)(L), struck out pars. (15) and (16) which defined “mistake of fact as to consent” and “affirmative defense”, respectively.

Subsec. (h). Pub. L. 112–81, §541(a)(5), redesignated subsec. (h) as (d).

Subsecs. (i), (j). Pub. L. 112–81, §541(a)(2), struck out subsecs. (i) and (j) which related to abusive sexual contact with a child and indecent liberty with a child, respectively.

Subsecs. (k) to (n). Pub. L. 112–81, §541(a)(6), struck out subsecs. (k) to (n) which related to indecent act, forcible pandering, wrongful sexual contact, and indecent exposure, respectively.

Subsec. (o). Pub. L. 112–81, §541(a)(2), struck out subsec. (o) which related to age of child.

Subsec. (p). Pub. L. 112–81, §541(a)(7), redesignated subsec. (p) as (e).

Subsec. (q). Pub. L. 112–81, §541(a)(8), redesignated subsec. (q) as (f).

Subsecs. (r), (s). Pub. L. 112–81, §541(a)(9), struck out subsecs. (r) and (s) which related to consent and mistake of fact as to consent and other affirmative defenses not precluded, respectively.

Subsec. (t). Pub. L. 112–81, §541(a)(10), redesignated subsec. (t) as (g).

2006—Pub. L. 109–163 amended section generally, substituting subsecs. (a) to (t) relating to rape, sexual assault, and other sexual misconduct for subsecs. (a) to (d) relating to rape and carnal knowledge.

1996—Subsec. (b). Pub. L. 104–106, §1113(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his

wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.”

Subsec. (d). Pub. L. 104–106, §1113(b), added subsec. (d). 1992—Subsec. (a). Pub. L. 102–484 struck out “with a female not his wife” after “intercourse” and “her” after “without”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, §552(c), Jan. 6, 2006, 119 Stat. 3263, provided that: “Section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to offenses committed on or after the effective date specified in subsection (f) [see note below].”

Amendment by Pub. L. 109–163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109–163, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

INTERIM MAXIMUM PUNISHMENTS

Pub. L. 109–163, div. A, title V, §552(b), Jan. 6, 2006, 119 Stat. 3263, provided that: “Until the President otherwise provides pursuant to section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), the punishment which a court-martial may direct for an offense under section 920 of such title (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), may not exceed the following limits:

“(1) SUBSECTIONS (a) AND (b).—For an offense under subsection (a) (rape) or subsection (b) (rape of a child), death or such other punishment as a court-martial may direct.

“(2) SUBSECTION (c).—For an offense under subsection (c) (aggravated sexual assault), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

“(3) SUBSECTIONS (d) AND (e).—For an offense under subsection (d) (aggravated sexual assault of a child) or subsection (e) (aggravated sexual contact), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

“(4) SUBSECTIONS (f) AND (g).—For an offense under subsection (f) (aggravated sexual abuse of a child) or subsection (g) (aggravated sexual contact with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

“(5) SUBSECTIONS (h) THROUGH (j).—For an offense under subsection (h) (abusive sexual contact), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

“(6) SUBSECTIONS (k) AND (l).—For an offense under subsection (k) (indecent act) or subsection (l) (forcible pandering), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

“(7) SUBSECTIONS (m) AND (n).—For an offense under subsection (m) (wrongful sexual contact) or subsection (n) (indecent exposure), dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.”

[See 2011 Amendment notes above for extensive amendment of section 920 of title 10 by Pub. L. 112–81, effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date.]

§ 920a. Art. 120a. Stalking

(a) Any person subject to this section—

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and

(3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) In this section:

(1) The term “course of conduct” means—

(A) a repeated maintenance of visual or physical proximity to a specific person; or

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person.

(2) The term “repeated”, with respect to conduct, means two or more occasions of such conduct.

(3) The term “immediate family”, in the case of a specific person, means a spouse, parent, child, or sibling of the person, or any other family member, relative, or intimate partner of the person who regularly resides in the household of the person or who within the six months preceding the commencement of the course of conduct regularly resided in the household of the person.

(Added Pub. L. 109-163, div. A, title V, §551(a)(1), Jan. 6, 2006, 119 Stat. 3256.)

EFFECTIVE DATE

Pub. L. 109-163, div. A, title V, §551(b), Jan. 6, 2006, 119 Stat. 3256, provided that: “Section 920a of title 10, United States Code (article 120a of the Uniform Code of Military Justice), as added by subsection (a), applies to offenses committed after the date that is 180 days after the date of the enactment of this Act [Jan. 6, 2006].”

§ 920b. Art. 120b. Rape and sexual assault of a child

(a) RAPE OF A CHILD.—Any person subject to this chapter who—

(1) commits a sexual act upon a child who has not attained the age of 12 years; or

(2) commits a sexual act upon a child who has attained the age of 12 years by—

(A) using force against any person;

(B) threatening or placing that child in fear;

(C) rendering that child unconscious; or

(D) administering to that child a drug, intoxicant, or other similar substance;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT OF A CHILD.—Any person subject to this chapter who commits a sexual

act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.

(c) SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) AGE OF CHILD.—

(1) UNDER 12 YEARS.—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) UNDER 16 YEARS.—In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(f) MARRIAGE.—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) CONSENT.—Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) DEFINITIONS.—In this section:

(1) SEXUAL ACT AND SEXUAL CONTACT.—The terms “sexual act” and “sexual contact” have the meanings given those terms in section 920(g) of this title (article 120(g)).

(2) FORCE.—The term “force” means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or

(C) inflicting physical harm.

In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) THREATENING OR PLACING THAT CHILD IN FEAR.—The term “threatening or placing that child in fear” means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) CHILD.—The term “child” means any person who has not attained the age of 16 years.

(5) LEWD ACT.—The term “lewd act” means—

(A) any sexual contact with a child;
 (B) intentionally exposing one’s genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(Added Pub. L. 112–81, div. A, title V, §541(b), Dec. 31, 2011, 125 Stat. 1407; amended Pub. L. 112–239, div. A, title X, §1076(a)(3), Jan. 2, 2013, 126 Stat. 1948.)

AMENDMENTS

2013—Pub. L. 112–239 made technical amendment to directory language of Pub. L. 112–81, which enacted this section.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(3) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as an Effective Date of 2011 Amendment note under section 843 of this title.

§ 920c. Art. 120c. Other sexual misconduct

(a) INDECENT VIEWING, VISUAL RECORDING, OR BROADCASTING.—Any person subject to this chapter who, without legal justification or lawful authorization—

(1) knowingly and wrongfully views the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy;

(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; or

(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);

is guilty of an offense under this section and shall be punished as a court-martial may direct.

(b) FORCIBLE PANDERING.—Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(c) INDECENT EXPOSURE.—Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(d) DEFINITIONS.—In this section:

(1) ACT OF PROSTITUTION.—The term “act of prostitution” means a sexual act or sexual contact (as defined in section 920(g) of this title (article 120(g))) on account of which anything of value is given to, or received by, any person.

(2) PRIVATE AREA.—The term “private area” means the naked or underwear-clad genitalia, anus, buttocks, or female areola or nipple.

(3) REASONABLE EXPECTATION OF PRIVACY.—The term “under circumstances in which that other person has a reasonable expectation of privacy” means—

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or

(B) circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

(4) BROADCAST.—The term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons.

(5) DISTRIBUTE.—The term “distribute” means delivering to the actual or constructive possession of another, including transmission by electronic means.

(6) INDECENT MANNER.—The term “indecent manner” means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(Added Pub. L. 112–81, div. A, title V, §541(c), Dec. 31, 2011, 125 Stat. 1409.)

EFFECTIVE DATE

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as an Effective Date of 2011 Amendment note under section 843 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of

any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
921(a)	50:715(a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921(b)	50:715(b).	

In subsection (a), the words “whatever” and “true” are omitted as surplusage. The word “it” is substituted for the words “the same” in clauses (1) and (2).

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
922	50:716.	May 5, 1950, ch. 169, § 1 (Art. 122), 64 Stat. 140.

§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
923	50:717.	May 5, 1950, ch. 169, § 1 (Art. 123), 64 Stat. 141.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee’s possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word “credit” means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87-385, §1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Pub. L. 87-385, §2, Oct. 4, 1961, 75 Stat. 814, provided that: “This Act [enacting this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October 1961].”

§ 924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
924	50:718.	May 5, 1950, ch. 169, § 1 (Art. 124), 64 Stat. 141.

§ 925. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration,

however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
925(a)	50:719(a).	May 5, 1950, ch. 169, §1 (Art. 125), 64 Stat. 141.
925(b)	50:719(b).	

§ 926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
926(a)	50:720(a).	May 5, 1950, ch. 169, §1 (Art. 126), 64 Stat. 141.
926(b)	50:720(b).	

In subsection (b), the words "of this section" are omitted as surplusage.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
927	50:721.	May 5, 1950, ch. 169, §1 (Art. 127), 64 Stat. 141.

The words "of any description" are omitted as surplusage.

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
928(a)	50:722(a).	May 5, 1950, ch. 169, §1 (Art. 128), 64 Stat. 141.
928(b)	50:722(b).	

§ 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918-928 of this title (articles 118-128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
929	50:723.	May 5, 1950, ch. 169, §1 (Art. 129), 64 Stat. 142.

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
930	50:724.	May 5, 1950, ch. 169, §1 (Art. 130), 64 Stat. 142.

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 94-550, §3, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 97-295, §1(13), Oct. 12, 1982, 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
931	50:725.	May 5, 1950, ch. 169, §1 (Art. 131), 64 Stat. 142.

The words "in a" are inserted before the words "course of justice".

AMENDMENTS

1982—Par. (2). Pub. L. 97-295 struck out "United States Code," after "title 28,".

1976—Pub. L. 94-550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

§ 932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
932	50:726.	May 5, 1950, ch. 169, §1 (Art. 132), 64 Stat. 142.

The word “it” is substituted for the words “the same” throughout the revised section.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
933	50:727.	May 5, 1950, ch. 169, §1 (Art. 133), 64 Stat. 142.

The word “commissioned” is inserted for clarity.

§ 934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
934	50:728.	May 5, 1950, ch. 169, §1 (Art. 134), 64 Stat. 142.

The words “shall be” are inserted before the word “punished”.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths and to act as notary.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
935(a)	50:731(a).	May 5, 1950, ch. 169, §1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (b), the word “commissioned” is inserted for clarity. The word “consists” is substituted for the words “shall consist”.

In subsection (c), the word “has” is substituted for the words “shall have”.

In subsection (e), the words “or affirmation” are omitted as covered by the definition of the word “oath” in section 1 of title 1.

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

In subsection (h), the word “If” is substituted for the words “In case”.

§ 936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.
- (5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(c) The judges of the United States Court of Appeals for the Armed Forces may administer the oaths authorized by subsections (a) and (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; Pub. L. 86-589, July 5, 1960, 74 Stat. 329; Pub. L. 90-179, §1(7), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90-632, §2(34), Oct. 24, 1968, 82 Stat. 1343; Pub. L. 98-209, §2(f), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99-661, div. A, title VIII, §804(c), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101-510, div. A, title V, §551(b), Nov. 5, 1990, 104 Stat. 1566; Pub. L. 110-181, div. A, title V, §542, Jan. 28, 2008, 122 Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
936(a)	50:732(a).	May 5, 1950, ch. 169, §1 (Art. 136), 64 Stat. 143.
936(b)	50:732(b).	
936(c)	50:732(c).	
936(d)	50:732(d).	

In subsection (a), the word “may” is substituted for the words “shall have authority to”. The word “shall” before the words “have the general powers” is omitted as surplusage. The words “the continental limits” are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words “in the armed forces” are omitted as surplusage.

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

In subsection (c), the words “of any character” are omitted as surplusage. The word “may” is substituted for the word “shall”.

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

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-181 added subsec. (c).

1990—Subsec. (a). Pub. L. 101-510, §551(b)(1), struck out “, and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States” after “including military justice” in introductory provisions.

Subsecs. (c), (d). Pub. L. 101-510, §551(b)(2), struck out subsecs. (c) and (d) which read as follows:

“(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

“(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.”

1988—Subsec. (a). Pub. L. 100-456 struck out “the Canal Zone,” before “Puerto Rico.”

1986—Subsecs. (a), (b). Pub. L. 99-661 inserted “or performing inactive-duty training” after “active duty”.

1983—Subsec. (a)(1). Pub. L. 98-209, §2(f)(1), struck out “of the Army, Navy, Air Force, and Marine Corps” after “All judge advocates”.

Subsec. (a)(2) to (7). Pub. L. 98-209, §2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968—Subsec. (b). Pub. L. 90-632 substituted “military judge” for “law officer” in par. (1).

1967—Subsec. (a)(1). Pub. L. 90-179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86-589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 937. Art. 137. Articles to be explained

(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this title (articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Pub. L. 99-661, div. A, title VIII, § 804(d), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 104-106, div. A, title XI, § 1152, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
937	50:733.	May 5, 1950, ch. 169, § 1 (Art. 137), 64 Stat. 144.

The word "each" is substituted for the word "every". The word "member" is substituted for the word "person". The words "in [any of] the armed forces of the United States" are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsecs. (a)(1) and (b), is classified to this chapter.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-106 substituted "within fourteen days" for "within six days".

1986—Pub. L. 99-661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
938	50:734.	May 5, 1950, ch. 169, § 1 (Art. 138), 64 Stat. 144.

The words "commanding officer" are substituted for the word "commander". The word "who" is inserted after the word "and". The word "commissioned" is inserted after the word "superior" for clarity. The words "The officer exercising general court-martial jurisdiction" are substituted for the words "That officer" for clarity. The word "send" is substituted for the word "transmit". The word "Secretary" is substituted for the word "Department" for accuracy, since the "Department", as an entity, could not act upon the complaint.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three

commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board. (Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows for 939(a) and 939(b).

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "under" is substituted for the words "subject to". The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1. The words "it has" are substituted for the words "shall have" in the second sentence. The word "is" is substituted for the words "shall be" before the words "subject" and "conclusive". The word "commissioned" is inserted for clarity.

In subsection (b), the word "If" is substituted for the word "Where". The word "considered" is substituted for the word "deemed".

§ 940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row for 940.

The word "may" is substituted for the words "is authorized to * * * to".

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Table with 3 columns: Sec., Art., and text. Rows 941 through 946.

AMENDMENTS

1994—Pub. L. 103-337, div. A, title IX, §924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted "UNITED

STATES COURT OF APPEALS FOR THE ARMED FORCES" for "COURT OF MILITARY APPEALS" as subchapter heading.

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

§ 941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103-337, div. A, title IX, §924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

CHANGE OF NAME

Pub. L. 103-337, div. A, title IX, §924(a)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: "The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces."

§ 942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after March 31 and before October 1 of any year, the term shall expire on September 30 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after September 30 of any year and before April 1 of the following year, the term shall expire fifteen years after such September 30.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

- (1) neglect of duty;
(2) misconduct; or
(3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) **PAY AND ALLOWANCES.**—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) **SENIOR JUDGES.**—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement

and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) **SERVICE OF ARTICLE III JUDGES.**—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) **EFFECT OF VACANCY ON COURT.**—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101-510, div. A, title V, §541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102-190, div. A, title X, §1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (e)(5). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (e)(5). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and the House of Representatives”.

1994—Subsecs. (a), (f)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1991—Subsec. (e)(1). Pub. L. 102-190, §1061(b)(1)(A)(i)–(iv), designated existing provisions as subpar. (A), struck out “(2)(A)” before “The chief judge”, moved sentence beginning “The chief judge of the court” to end of par. (1)(A), substituted “an individual who is a senior judge of the court under this subparagraph” for “a senior judge of the court”, and added subpar. (B).

Subsec. (e)(2). Pub. L. 102-190, §1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102-190, §1061(b)(1)(B), substituted “paragraph (1)” for “paragraph (2)” wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102-190, §1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102-190, §1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101-510, §541(f)(1), substituted “civilian life” for “civil life”.

Subsec. (b)(4). Pub. L. 101-510, §541(f)(2), added par. (4).

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title X, §1061(b)(1)(D), Dec. 5, 1991, 105 Stat. 1474, provided that: “The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989.”

EFFECTIVE DATE FOR REPEAL OF TERMINATION OF AUTHORITY FOR CHIEF JUSTICE OF UNITED STATES TO DESIGNATE ARTICLE III JUDGES FOR TEMPORARY SERVICE ON COURT OF APPEALS FOR THE ARMED FORCES

Pub. L. 104-201, div. A, title X, §1074(c)(2), Sept. 23, 1996, 110 Stat. 2660, provided that: “The authority provided under section 942(f) of title 10, United States Code, shall be effective as if section 1142 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat. 467) [repealing section 1301(i) of Pub. L. 101-189, set out below] had been enacted on September 29, 1995.”

TRANSITIONAL PROVISIONS

Pub. L. 101-189, div. A, title XIII, §1301(d)–(i), Nov. 29, 1989, 103 Stat. 1574-1576, as amended by Pub. L. 104-106, div. A, title XI, §1142, Feb. 10, 1996, 110 Stat. 467; Pub. L. 104-201, div. A, title X, §1068(c), Sept. 23, 1996, 110 Stat. 2655, provided that:

“(d) TRANSITION FROM THREE-JUDGE COURT TO FIVE-JUDGE COURT.—(1) Effective during the period before October 1, 1990—

“(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

“(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

“(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judge who is first appointed to one

of the two new positions of the court created as of October 1, 1990, as designated by the President at the time of appointment, the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven.

“(e) TRANSITION RULES RELATING TO RETIREMENT OF NEW JUDGES.—(1) Except as otherwise provided in paragraphs (2) and (3), a judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

“(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

“(A) completes the term of service for which he is first appointed;

“(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] at any time after the completion of such term of service;

“(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

“(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

“(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be $\frac{1}{5}$ of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge’s service as a judge of the court.

“(f) APPLICABILITY OF AMENDED RETIREMENT PROVISIONS.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

“(g) TERMS OF CURRENT JUDGES.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

“(h) CIVIL SERVICE STATUS OF CURRENT EMPLOYEES.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989].”

§ 943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102-484, div. A, title X, §1061(a)(1), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831;

Pub. L. 104-201, div. A, title X, §1068(b), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105-85, div. A, title X, §1073(a)(11), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105-85 made technical amendment to heading and substituted “under the court” for “under the Court” in second sentence and “positions referred to in the preceding sentences” for “such positions” in third sentence.

1996—Subsec. (c). Pub. L. 104-201 substituted “Certain” for “Attorney” in heading and inserted “A position of employment under the Court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service.” after first sentence in par. (1).

1994—Subsecs. (a)(1), (c). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1992—Subsec. (a). Pub. L. 102-484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “CHIEF JUDGE.—The President shall designate from time to time one of the judges of the United States Court of Military Appeals to be chief judge of the court.”

TRANSITION PROVISION

Pub. L. 102-484, div. A, title X, §1061(b), Oct. 23, 1992, 106 Stat. 2504, provided that: “For purposes of section 943(a) (article 943(a)) of title 10, United States Code, as amended by subsection (a)—

“(1) the person serving as the chief judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the date of the enactment of this Act [Oct. 23, 1992] shall be deemed to have been designated as the chief judge under such section; and

“(2) the five-year term provided in paragraph (3) of such section shall be deemed to have begun on the date on which such judge was originally designated as the chief judge under section 867(a) or 943 of title 10, United States Code, as the case may be, as that provision of law was in effect on the date of the designation.”

INAPPLICABILITY OF SUBSECTION (c)

Subsec. (c) of this section not to be applied to change civil service status of any attorney who is an employee of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on Nov. 28, 1989, see section 1301(h) of Pub. L. 101-189, set out as a Transitional Provisions note under section 942 of this title.

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

§ 945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon

separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include

provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the

fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102-190, div. A, title X, §1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102-484, div. A, title X, §§1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (i), is section 301(a)(2) and (d) of Pub. L. 99-335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1992—Subsec. (a)(1). Pub. L. 102-484, §1052(11), substituted "section 942(e)(1)(B) of this title (article 142(e)(1)(B))" for "section 943(e)(1)(B) of this title (art. 143(e)(1)(B))".

Subsec. (i). Pub. L. 102-484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102-190 inserted at end "A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title X, §1062(a)(2), Oct. 23, 1992, 106 Stat. 2505, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992]."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102-190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101-189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Pub. L. 102-484, div. A, title X, §1062(b), Oct. 23, 1992, 106 Stat. 2505, provided that:

"(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section

301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note] if—

"(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

"(B) as of the date of the election, such individual is—

"(i) subject to the Civil Service Retirement System; or

"(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

"(2) An election under this subsection—

"(A) shall not be effective unless it is—

"(i) made within 30 days after the date of the enactment of this Act; and

"(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note]; and

"(B) may not be revoked.

"(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.]."

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Homeland Security.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Information from the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps on the following:

(i) The appellate review process, including—

(I) information on compliance with processing time goals;

(II) discussions of the circumstances surrounding cases in which general court-martial or special court-martial convictions are reversed as a result of command influence or denial of the right to a speedy review or otherwise remitted due to loss of records of trial or other administrative deficiencies; and

(III) discussions of cases in which a provision of this chapter is held unconstitutional.

(ii) Measures implemented by each armed force to ensure the ability of judge advocates to competently participate as trial and defense counsel in, and preside as military judges over, capital cases, national security cases, sexual assault cases, and proceedings of military commissions.

(iii) The independent views of the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps on the sufficiency of resources available within their respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.

(C) Any recommendation of the committee relating to—

- (i) uniformity of policies as to sentences;
(ii) amendments to this chapter; and
(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112-239, div. A, title V, §532, Jan. 2, 2013, 126 Stat. 1726.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2013—Subsec. (c)(2)(B), (C). Pub. L. 112-239 added subpar. (B) and redesignated former subpar. (B) as (C).

2002—Subsec. (c)(1)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1999—Subsec. (c)(1)(A). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (c)(1)(A). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

1994—Subsec. (b)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

CHAPTER 47A—MILITARY COMMISSIONS

Subchapter I. General Provisions 948a.

Subchapter II. Composition of Military Commissions .. 948h.
III. Pre-Trial Procedure 948q.
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CODIFICATION

This chapter was originally added by Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2600, and amended by Pub. L. 110-181, Jan. 28, 2008, 122 Stat. 3. This chapter is shown here, however, as having been added by Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2574, without reference to those intervening amendments because of the general amendment of this chapter by Pub. L. 111-84.

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 948a. Definitions.
948b. Military commissions generally.
948c. Persons subject to military commissions.
948d. Jurisdiction of military commissions.

§ 948a. Definitions

In this chapter:

(1) ALIEN.—The term “alien” means an individual who is not a citizen of the United States.

(2) CLASSIFIED INFORMATION.—The term “classified information” means the following:

(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(3) COALITION PARTNER.—The term “coalition partner”, with respect to hostilities engaged in by the United States, means any State or armed force directly engaged along with the United States in such hostilities or providing direct operational support to the United States in connection with such hostilities.

(4) GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR.—The term “Geneva Convention Relative to the Treatment of Prisoners of War” means the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316).

(5) GENEVA CONVENTIONS.—The term “Geneva Conventions” means the international conventions signed at Geneva on August 12, 1949.

(6) PRIVILEGED BELLIGERENT.—The term “privileged belligerent” means an individual belonging to one of the eight categories enumerated in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War.

(7) UNPRIVILEGED ENEMY BELLIGERENT.—The term “unprivileged enemy belligerent” means an individual (other than a privileged belligerent) who—

¹ So in original. Does not conform to subchapter heading.