

Editorial Notes

AMENDMENTS

2024—Subsec. (d)(1)(A). Pub. L. 118-159, §562(1), substituted “section 919a (article 119a), section 920 (article 120), section 920a (article 120a),” for “section 920 (article 120),”.

Subsec. (d)(2), (3). Pub. L. 118-159, §562(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(3)(A). Pub. L. 118-159, §562(4)(A), inserted “or (2)” after “paragraph (1)”.

Subsec. (d)(3)(B). Pub. L. 118-159, §562(4)(B), substituted “subsection (c)(2)(A) or paragraph (1) or (2) of this subsection” for “paragraph (1)”.

2023—Subsec. (d). Pub. L. 118-31 added subsec. (d).

2022—Subsec. (c)(3). Pub. L. 117-263, §542(a)(1), substituted “Subject to paragraph (5)” for “Subject to paragraph (4)” in introductory provisions.

Subsec. (c)(3)(D). Pub. L. 117-263, §542(a)(2), substituted “an authorized rehearing” for “an ordered rehearing”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2023 AMENDMENT

Amendment by Pub. L. 118-31 effective immediately after amendment by part 1 of subtitle D of title V of Pub. L. 117-81, see section 531(e) of Pub. L. 118-31, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-263, div. A, title V, §542(b), Dec. 23, 2022, 136 Stat. 2581, provided that: “The amendments made by subsection (a) [amending this section] shall take effect immediately after the coming into effect of the amendments made by section 531 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81; 135 Stat. 1692) [enacting this section] as provided in section 539C of that Act (10 U.S.C. 801 note).”

EFFECTIVE DATE

Section effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability if regulations are not prescribed by the President before the date that is two years after Dec. 27, 2021, see section 539C of Pub. L. 117-81, set out as an Effective Date of 2021 Amendment note under section 801 of this title.

RESIDUAL PROSECUTORIAL DUTIES AND OTHER JUDICIAL FUNCTIONS OF CONVENING AUTHORITIES IN COVERED CASES

Pub. L. 117-263, div. A, title V, §541(c), Dec. 23, 2022, 136 Stat. 2580, provided that: “The President shall prescribe regulations to ensure that residual prosecutorial duties and other judicial functions of convening authorities, including granting immunity, ordering depositions, and hiring experts, with respect to charges and specifications over which a special trial counsel exercises authority pursuant to section 824a of title 10, United States Code (article 24a of the Uniform Code of Military Justice) (as added by section 531 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81; 135 Stat. 1692)), are transferred to the military judge, the special trial counsel, or other authority as appropriate in such cases by no later than the effective date established in section 539C of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81; 10 U.S.C. 801 note), in consideration of due process for all parties involved in such a case.”

§ 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 on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members shall be sentenced by the military judge.

(2) In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the accused shall be sentenced in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(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 the member being tried in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in the opinion of the convening authority, 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 the member is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(4) When convening a court-martial, the convening authority shall detail as members there-

of members of the armed forces under such regulations as the President may prescribe for the randomized selection of qualified personnel, to the maximum extent practicable.

(f) 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 the authority of the convening authority under this subsection to the staff judge advocate or legal officer of the convening authority 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. 1386; 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; Pub. L. 114-328, div. E, title LV, §5182, title LVI, §5203(e)(2), Dec. 23, 2016, 130 Stat. 2899, 2906; Pub. L. 117-263, div. A, title V, §543(a), Dec. 23, 2022, 136 Stat. 2582; Pub. L. 118-31, div. A, title V, §531(b)(2), Dec. 22, 2023, 137 Stat. 258.)

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”, respectively, are substituted for the words “person” and “persons”.

Editorial Notes

AMENDMENTS

2023—Subsec. (d)(1). Pub. L. 118-31, §531(b)(2)(A)(i), substituted “shall be sentenced by the military judge” for “may, after the findings are announced and before any matter is presented in the sentencing phase, re-

quest, orally on the record or in writing, sentencing by members”.

Subsec. (d)(2). Pub. L. 118-31, §531(b)(2)(A)(ii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).”

Subsec. (e)(1). Pub. L. 118-31, §531(b)(2)(B)(i), substituted “the member being tried” for “him”.

Subsec. (e)(2). Pub. L. 118-31, §531(b)(2)(B)(ii), substituted “the opinion of the convening authority” for “his opinion” and “the member” for “he”.

Subsec. (f). Pub. L. 118-31, §531(b)(2)(C), substituted “the authority of the convening authority” for “his authority” and “the staff judge advocate or legal officer of the convening authority” for “his staff judge advocate or legal officer”.

2022—Subsec. (e)(4). Pub. L. 117-263 added par. (4).

2016—Subsec. (c). Pub. L. 114-328, §5182(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to service on general and special courts-martial by enlisted members.

Subsec. (d). Pub. L. 114-328, §5182(b)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114-328, §5182(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 114-328, §5203(e)(2), which directed amendment of this section by substituting “preliminary hearing officer” for “investigating officer” in subsec. (d)(2), was executed by making the substitution in subsec. (e)(2) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (e) by Pub. L. 114-328, §5182(b)(1).

Subsec. (e)(3). Pub. L. 114-328, §5182(c), added par. (3).

Subsec. (f). Pub. L. 114-328, §5182(b)(1), redesignated subsec. (e) as (f).

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2023 AMENDMENT

Amendment by Pub. L. 118-31 effective immediately after amendment by part 1 of subtitle D of title V of Pub. L. 117-81, see section 531(e) of Pub. L. 118-31, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-263, div. A, title V, §543(b), Dec. 23, 2022, 136 Stat. 2582, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date that is two years after the date of the enactment of this Act [Dec. 23, 2022] and shall apply with respect to courts-martial convened on or after that effective date.”

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

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.

REGULATIONS

Pub. L. 117-263, div. A, title V, §543(c), Dec. 23, 2022, 136 Stat. 2582, provided that: “Not later than the effective date specified in subsection (b) [see Effective Date of 2022 Amendment note above], the President shall prescribe regulations implementing the requirement under paragraph (4) of section 825(e) of title 10, United States Code (article 25(e) of the Uniform Code of Military Justice), as added by subsection (a) of this section.”

§ 825a. Art. 25a. Number of court-martial members in capital cases

(a) IN GENERAL.—In a case in which the accused may be sentenced to death, the number of members shall be 12.

(b) CASE NO LONGER CAPITAL.—Subject to section 829 of this title (article 29)—

(1) if a case is referred for trial as a capital case and, before the members are impaneled, the accused may no longer be sentenced to death, the number of members shall be eight; and

(2) if a case is referred for trial as a capital case and, after the members are impaneled, the accused may no longer be sentenced to death, the number of members shall remain 12.

(Added Pub. L. 107-107, div. A, title V, §582(b)(1), Dec. 28, 2001, 115 Stat. 1124; amended Pub. L. 114-328, div. E, title LV, §5183, Dec. 23, 2016, 130 Stat. 2900.)

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “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.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with imple-

menting regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

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 and 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, by reason of education, training, experience, and judicial temperament, for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c)(1) In accordance with regulations prescribed under subsection (a), a military judge of a general or special court-martial shall be designated for detail by the Judge Advocate General of the armed force of which the military judge is a member.

(2) Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to the military judge's performance of duty as a military judge.

(3) A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial—

(A) may perform such duties only when the officer is assigned and directly responsible to the Judge Advocate General of the armed force of which the military judge is a member; and

(B) may perform duties of a judicial or non-judicial nature other than those relating to the officer's primary duty as a military judge of a general court-martial when such duties are assigned to the officer by or with the approval of that Judge Advocate General.

(4) In accordance with regulations prescribed by the President, assignments of military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(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 preliminary hearing 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.