

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
830(b)	50:601(b).	(Art. 30), 64 Stat. 118.

In subsection (a), the word “they” is substituted for the words “the same”. The word “commissioned” is inserted for clarity.

Editorial Notes

AMENDMENTS

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

“(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.”

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 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.

TIMELY DISPOSITION OF NONPROSECUTABLE SEX-RELATED OFFENSES

Pub. L. 116-92, div. A, title V, §540C, Dec. 20, 2019, 133 Stat. 1366, provided that:

“(a) **POLICY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall develop and implement a policy to ensure the timely disposition of nonprosecutable sex-related offenses.

“(b) **NONPROSECUTABLE SEX-RELATED OFFENSE DEFINED.**—In this section, the term ‘nonprosecutable sex-related offense’ means an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) that a court-martial convening authority has declined to refer for trial by a general or special court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), due to a determination that there is insufficient evidence to support prosecution of the sex-related offense.”

§ 830a. Art. 30a. Proceedings conducted before referral

(a) **IN GENERAL.**—(1) The President shall prescribe regulations for matters relating to proceedings conducted before referral of charges and specifications to court-martial for trial, including the following:

(A) Pre-referral investigative subpoenas.

(B) Pre-referral warrants or orders for electronic communications.

(C) Pre-referral matters referred by an appellate court.

(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

(E) Pre-referral matters relating to the following:

(i) Pre-trial confinement of an accused.

(ii) The mental capacity or mental responsibility of an accused.

(iii) A request for an individual military counsel.

(2) In addition to the matters specified in paragraph (1), the regulations prescribed under that paragraph shall—

(A) set forth the matters that a military judge may rule upon in such proceedings;

(B) include procedures for the review of such rulings;

(C) include appropriate limitations to ensure that proceedings under this section extend only to matters that would be subject to consideration by a military judge in a general or special court-martial; and

(D) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.

(3) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

(b) **DETAIL OF MILITARY JUDGE.**—The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed to proceedings under subsection (a)(1).

(c) **DISCRETION TO DESIGNATE MAGISTRATE TO PRESIDE.**—In accordance with regulations prescribed by the Secretary concerned, a military judge detailed to a proceeding under subsection (a)(1), other than a proceeding described in subparagraph (B) of that subsection, may designate a military magistrate to preside over the proceeding.

(Added Pub. L. 114-328, div. E, title LVI, §5202, Dec. 23, 2016, 130 Stat. 2904; amended Pub. L. 115-91, div. A, title V, §531(b), Dec. 12, 2017, 131 Stat. 1384; Pub. L. 116-92, div. A, title V, §531(a), (b)(1), Dec. 20, 2019, 133 Stat. 1359.)

Editorial Notes

AMENDMENTS

2019—Pub. L. 116-92, §531(b)(1), substituted “Proceedings conducted before referral” for “Certain proceedings conducted before referral” in section catchline.

Subsec. (a)(1), (2). Pub. L. 116-92, §531(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) Proceedings may be conducted to review, or otherwise act on, the following matters before referral of charges and specifications to court-martial for trial in accordance with regulations prescribed by the President:

“(A) Pre-referral investigative subpoenas.

“(B) Pre-referral warrants or orders for electronic communications.

“(C) Pre-referral matters referred by an appellate court.

“(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

“(2) The regulations prescribed under paragraph (1) shall—

“(A) include procedures for the review of such rulings that may be ordered under this section as the President considers appropriate; and

“(B) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.”

2017—Subsec. (a)(1). Pub. L. 115-91, §531(b)(1), inserted “, or otherwise act on,” after “to review” in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 115-91, §531(b)(2), added subpar. (D).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 effective immediately after this section takes effect as provided for in section 5542 of Pub. L. 114-328 (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115-91, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section 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. 13825, set out as notes under section 801 of this title.

§ 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. Preliminary hearing required before referral to general court-martial

(a) IN GENERAL.—(1)(A) Except as provided in subparagraph (B), a preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial. The preliminary hearing shall be conducted by an impartial hearing officer detailed in accordance with subparagraph (C).

(B) Under regulations prescribed by the President, a preliminary hearing need not be held if the accused submits a written waiver to—

(i) except as provided in clause (ii), the convening authority and the convening authority determines that a hearing is not required; and

(ii) with respect to charges and specifications over which the special trial counsel is exercising authority in accordance with section 824a of this title (article 24a), the special trial counsel and the special trial counsel determines that a hearing is not required.

(C)(i) Except as provided in clause (ii), the convening authority shall detail a hearing officer.

(ii) If a special trial counsel is exercising authority over the charges and specifications subject to a preliminary hearing under this section (article), the special trial counsel shall request a hearing officer and a hearing officer shall be provided by the convening authority, in accordance with regulations prescribed by the President.

(2) The purpose of the preliminary hearing shall be limited to determining the following:

(A) Whether or not the specification alleges an offense under this chapter.

(B) Whether or not there is probable cause to believe that the accused committed the offense charged.

(C) Whether or not the convening authority has court-martial jurisdiction over the accused and over the offense.

(D) A recommendation as to the disposition that should be made of the case.

(b) HEARING OFFICER.—(1) A preliminary hearing under this section shall be conducted by an impartial hearing officer, who—

(A) whenever practicable, shall be a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)); or

(B) when it is not practicable to appoint a judge advocate because of exceptional circumstances, is not a judge advocate so certified.

(2) In the case of a hearing officer under paragraph (1)(B), a judge advocate who is certified under section 827(b)(2) of this title (article 27(b)(2)) shall be available to provide legal advice to the hearing officer.

(3) Whenever practicable, the hearing officer shall be equal in grade or senior in grade to military counsel who are detailed to represent the accused or the Government at the preliminary hearing.

(c) REPORT TO CONVENING AUTHORITY OR SPECIAL TRIAL COUNSEL.—After a preliminary hearing under this section, the hearing officer shall submit to the convening authority or, in the case of a preliminary hearing in which the hearing officer is provided at the request of a special trial counsel to the special trial counsel, a written report (accompanied by a recording of the preliminary hearing under subsection (e)) that includes the following:

(1) For each specification, a statement of the reasoning and conclusions of the hearing officer with respect to determinations under subsection (a)(2), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations of the hearing officer concerning the testimony of witnesses and the availability and admissibility of evidence at trial.

(2) Recommendations for any necessary modifications to the form of the charges or specifications.