

(b) COMMENCEMENT OF TRIAL.—(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a)) may be held over the objection of the accused—

(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90-632, §2(12), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 114-328, div. E, title LVI, §5206, Dec. 23, 2016, 130 Stat. 2908.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
835 .....	50:606.	May 5, 1950, ch. 169, §1 (Art. 35), 64 Stat. 119.

The word “may” is substituted for the word “shall”. The word “after” is substituted for the words “subsequent to”.

Editorial Notes

AMENDMENTS

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

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)).

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.

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

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Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, div. A, title X, §1081(a)(20), Jan. 1, 2021, 134 Stat. 3871, added item 837 and struck out former item 837 “837. Art. 37. Command influence”.

2019—Pub. L. 116-92, div. A, title V, §532(b), Dec. 20, 2019, 133 Stat. 1361, in item 837 substituted “Art. 37. Command influence” for “37. Unlawfully influencing action of court”.

2017—Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114-328, §5541(4). See 2016 Amendment note below.

2016—Pub. L. 114-328, div. E, title LXIII, §5541(4), Dec. 23, 2016, 130 Stat. 2966, as amended by Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, added item 853a and substituted “Opportunity to obtain witnesses and other evidence in trials by court-martial” for “Opportunity to obtain witnesses and other evidence” in item 846, “Refusal of person not subject to chapter to appear, testify, or produce evidence” for “Refusal to appear or testify” in item 847, “Contempt” for “Contempts” in item 848, “Admissibility of sworn testimony from records of courts of inquiry” for “Admissibility of records of courts of inquiry” in item 850, “Votes required for conviction, sentencing, and other matters” for “Number of votes required” in item 852, and “Findings and sentencing” for “Court to announce action” in item 853.

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

Revised section	Source (U.S. Code)	Source (Statutes at Large)
836(a) .....	50:611(a).	May 5, 1950, ch. 169, §1
836(b) .....	50:611(b).	(Art. 36), 64 Stat. 120.

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”.

Editorial Notes

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. Command influence

(a)(1) No court-martial convening authority, 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.

(2) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(3) No person subject to this chapter may attempt to coerce or, by any unauthorized means, attempt to 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 or preliminary hearing officer with respect to such acts taken pursuant to this chapter as prescribed by the President.

(4) Conduct that does not constitute a violation of paragraphs (1) through (3) may include, for example—

(A) general instructional or informational courses in military justice if such courses are

designed solely for the purpose of instructing persons on the substantive and procedural aspects of courts-martial;

(B) statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding or sentence, or do not relate to a particular accused; or

(C) statements and instructions given in open court by the military judge or counsel.

(5)(A) Notwithstanding paragraphs (1) through (3), but subject to subparagraph (B)—

(i) a superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer; and

(ii) a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under this chapter.

(B) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(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 person in a court-martial proceeding.

(c) No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.

(d)(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as provided in paragraph (1) or as otherwise authorized by this chapter, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has authority to dispose of the offenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90-632, §2(13), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 116-92, div. A, title V, §532(a), Dec. 20, 2019, 133 Stat. 1359.)