

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

Editorial Notes

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5227(c)(1), inserted heading.

Subsec. (b). Pub. L. 114-328, § 5227(c)(2), inserted heading.

Pub. L. 114-328, § 5227(a), substituted “is mandatory” for “may be adjudged” and struck out “or by a court-martial without a military judge” after “by the military judge” and “, if permitted by regulations of the Secretary concerned,” after “charge or specification may”.

Subsec. (c). Pub. L. 114-328, § 5227(b), added subsec. (c).
 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.

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.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—In a case referred for trial by court-martial, 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.

(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

(1) before a court-martial, military commission, or court of inquiry;

(2) at a deposition under section 849 of this title (article 49); or

(3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

(A) for a court-martial, military commission, or court of inquiry;

(B) for a deposition under section 849 of this title (article 49);

(C) for an investigation of an offense under this chapter; or

(D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

(1) order that the subpoena or other process be modified or withdrawn, as appropriate; or

(2) order the person to comply with the subpoena or other process.

(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; Pub. L. 113-66, div. A, title XVII, § 1704, Dec. 26, 2013, 127 Stat. 958; Pub. L. 113-291, div. A, title V, § 531(b), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114-328, div. E, title LVII, § 5228(a), Dec. 23, 2016, 130 Stat. 2911.)

HISTORICAL AND REVISION NOTES

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

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

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328, § 5228(a)(5), amended section catchline generally, substituting “Opportunity to obtain witnesses and other evidence in trials by court-martial” for “Opportunity to obtain witnesses and other evidence”.

Subsec. (a). Pub. L. 114-328, § 5228(a)(1), substituted “In a case referred for trial by court-martial, the trial

counsel, the defense counsel,” for “The counsel for the Government, the counsel for the accused.”

Subsec. (b). Pub. L. 114-328, § 5228(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to request by counsel for accused to interview the victim of an alleged sex-related offense.

Subsec. (c). Pub. L. 114-328, § 5228(a)(3), amended subsec. (c) generally. Prior to amendment, text read as follows: “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.”

Subsecs. (d), (e). Pub. L. 114-328, § 5228(a)(4), added subsecs. (d) and (e).

2014—Subsec. (a). Pub. L. 113-291, § 531(b)(2), (3)(B), substituted “counsel for the Government” for “trial counsel” and “counsel for the accused” for “defense counsel”.

Subsec. (b). Pub. L. 113-291, § 531(b)(3)(A), which directed substitution of “COUNSEL FOR ACCUSED” for “DEFENSE COUNSEL” in heading of section, was executed by making the substitution in the heading of subsec. (b) to reflect the probable intent of Congress.

Pub. L. 113-291, § 531(b)(2), (3)(B), substituted “counsel for the Government” for “trial counsel” and “counsel for the accused” for “defense counsel” wherever appearing.

Subsec. (b)(1). Pub. L. 113-291, § 531(b)(1), substituted “through the Special Victims’ Counsel or other counsel for the victim, if applicable” for “through trial counsel”.

2013—Pub. L. 113-66 designated first sentence as subsec. (a) and second sentence as subsec. (c), inserted headings, and added subsec. (b).

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

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.

§ 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence

(a) IN GENERAL.—(1) Any person described in paragraph (2) who—

- (A) willfully neglects or refuses to appear; or
- (B) willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce;

is guilty of an offense against the United States.

(2) The persons referred to in paragraph (1) are the following:

(A) Any person not subject to this chapter who—

- (i) is issued a subpoena or other process described in subsection (c) of section 846 of this title (article 46); and

(ii) is 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.

(B) Any person not subject to this chapter who is issued a subpoena or other process de-

scribed in subsection (d) of section 846 of this title (article 46).

(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; Pub. L. 113-66, div. A, title XVII, § 1702(c)(3)(D), Dec. 26, 2013, 127 Stat. 958; Pub. L. 114-328, div. E, title LVII, § 5229, Dec. 23, 2016, 130 Stat. 2913.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
847(a)	50:622(a).	May 5, 1950, ch. 169, § 1 (Art. 47), 64 Stat. 123.
847(b)	50:622(b).	
847(c)	50:622(c).	
847(d)	50:622(d).	

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”.

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328, § 5229(b), amended section catchline generally, substituting “Refusal of person not subject to chapter to appear, testify, or produce evidence” for “Refusal to appear or testify”.

Subsec. (a). Pub. L. 114-328, § 5229(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “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 a preliminary hearing pursuant to section 832 of this title (article 32);