

Subsec. (c). Pub. L. 114-328, §5234(3), struck out “or the president of a court-martial without a military judge” after “the military judge” in introductory provisions.

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).

**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.

**§ 852. Art. 52. Votes required for conviction, sentencing, and other matters**

(a) **IN GENERAL.**—No person may be convicted of an offense in a general or special court-martial, other than—

(1) after a plea of guilty under section 845(b) of this title (article 45(b));

(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

(b) **LEVEL OF CONCURRENCE REQUIRED.**—

(1) **IN GENERAL.**—Except as provided in subsection (a) and in paragraph (2), all matters to be decided by members of a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, 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.

(2) **SENTENCING.**—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90-632, §2(22), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 114-328, div. E, title LVII, §5235, Dec. 23, 2016, 130 Stat. 2916.)

**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.

**Editorial Notes**

**AMENDMENTS**

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to number of votes required for conviction of an offense for which the death penalty is mandatory, sentences, and all other questions, respectively.

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.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2016 AMENDMENT**

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**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. Findings and sentencing**

(a) **ANNOUNCEMENT.**—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) **SENTENCING GENERALLY.**—

(1) **GENERAL AND SPECIAL COURTS-MARTIAL.**—Except as provided in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused. The sentence determined by the military judge constitutes the sentence of the court-martial.

(2) **SUMMARY COURTS-MARTIAL.**—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

(c) **SENTENCING FOR CAPITAL OFFENSES.**—

(1) **IN GENERAL.**—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death—

(A) the members shall determine—