

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

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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

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.

§ 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—

(i) whether the sentence for that offense shall be death or life in prison without eligibility for parole; or

(ii) whether the matter shall be returned to the military judge for determination of a lesser punishment; and

(B) the military judge shall sentence the accused for that offense in accordance with the determination of the members under subparagraph (A).

(2) LESSER AUTHORIZED PUNISHMENTS.—In accordance with regulations prescribed by the President, the military judge may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

(3) OTHER NON-CAPITAL OFFENSES.—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 subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 114-328, div. E, title LVII, § 5236, Dec. 23, 2016, 130 Stat. 2916; Pub. L. 115-91, div. A, title X, § 1081(c)(1)(G), Dec. 12, 2017, 131 Stat. 1598; Pub. L. 117-81, div. A, title V, § 539E(a), Dec. 27, 2021, 135 Stat. 1700.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
853	50:628.	May 5, 1950, ch. 169, §1 (Art. 53), 64 Stat. 125.

The word “A” is substituted for the word “Every”.

Editorial Notes

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 117-81, § 539E(a)(1), amended par. (1) generally. Prior to amendment, par. (1) provided that, except for capital offenses, accused who is convicted in trial by general or special court-martial shall be sentenced by military judge or, if court-martial consisted of military judge and members, accused may elect sentencing by members.

Subsec. (c)(1). Pub. L. 117-81, § 539E(a)(2)(A), amended par. (1) generally. Prior to amendment, text read as follows: “In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the members shall determine whether the sentence for that offense shall be death or a lesser authorized punishment.”

Subsec. (c)(2). Pub. L. 117-81, § 539E(a)(2)(B), substituted “the military judge” for “the court-martial”.

2017—Subsec. (b)(1)(B). Pub. L. 115-91 struck out “in a trial” after “convicted of an offense”.

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “A court-martial shall announce its findings and sentence to the parties as soon as determined.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-81, div. A, title V, § 539E(f), Dec. 27, 2021, 135 Stat. 1706, provided that: “The amendments made by this section [amending this section and sections 853a, 856, and 866 of this title and repealing provisions set out as a note under section 856 of this title] shall

take effect on the date that is two years after the date of the enactment of this Act [Dec. 27, 2021] and shall apply to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after the date of the enactment of this Act.”

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 effective immediately after the amendments made by div. E (§§ 5001-5542) of Pub. L. 114-328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115-91, set out as a note under section 801 of this title.

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.

§ 853a. Art. 53a. Plea agreements

(a) IN GENERAL.—(1) Subject to paragraph (3), at any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(3) With respect to charges and specifications over which a special trial counsel exercises authority pursuant to section 824a of this title (article 24a), a plea agreement under this section may only be entered into between a special trial counsel and the accused. Such agreement shall be subject to the same limitations and conditions applicable to other plea agreements under this section (article).

(b) ACCEPTANCE OF PLEA AGREEMENT.—Subject to subsection (c), the military judge of a general or special court-martial shall accept a plea agreement submitted by the parties, except that—

(1) in the case of an offense with a sentencing parameter set forth in regulations prescribed by the President pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge may reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable; and

(2) in the case of an offense for which the President has not established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable.

(c) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or spe-