

(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-

cial court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2));

(4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.

(d) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(e) BINDING EFFECT OF PLEA AGREEMENT.—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties (including the convening authority and the special trial counsel in the case of a plea agreement entered into under subsection (a)(3)) and the court-martial.

(Added Pub. L. 114-328, div. E, title LVII, § 5237, Dec. 23, 2016, 130 Stat. 2917; amended Pub. L. 115-91, div. A, title V, § 531(d), title X, § 1081(c)(1)(H), Dec. 12, 2017, 131 Stat. 1384, 1598; Pub. L. 117-81, div. A, title V, §§ 539, 539E(b), Dec. 27, 2021, 135 Stat. 1698, 1701.)

Editorial Notes

REFERENCES IN TEXT

Section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, referred to in subsec. (b), is section 539E(e) of Pub. L. 117-81, which is set out as a note under section 856 of this title.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117-81, § 539(a)(1), substituted “Subject to paragraph (3), at any time” for “At any time” in introductory provisions.

Subsec. (a)(3). Pub. L. 117-81, § 539(a)(2), added par. (3).

Subsecs. (b), (c). Pub. L. 117-81, § 539E(b), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 117-81, § 539E(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 117-81, § 539(b), inserted “(including the convening authority and the special trial counsel in the case of a plea agreement entered into under subsection (a)(3))” after “parties”.

Subsec. (e). Pub. L. 117-81, § 539E(b)(1), redesignated subsec. (d) as (e).

2017—Subsec. (b)(4), (5). Pub. L. 115-91, § 531(d)(1), added pars. (4) and (5).

Subsec. (d). Pub. L. 115-91, § 1081(c)(1)(H), which directed substitution of “court-martial” for “military judge” the second place it appeared, could not be executed because of the prior amendment by Pub. L. 115-91, § 531(d)(2). See below.

Pub. L. 115-91, § 531(d)(2), substituted “shall bind the parties and the court-martial” for “shall bind the parties and the military judge”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 539 of Pub. L. 117-81 effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability if regulations are not prescribed by the President before the date that is two years after Dec. 27, 2021, see section 539C of Pub. L. 117-81, set out as a note under section 801 of this title.

Amendment by section 539E(b) of Pub. L. 117-81 effective on the date that is two years after Dec. 27, 2021, and applicable to sentences adjudged in cases in which all findings of guilty are for offenses that occurred after the date that is two years after Dec. 27, 2021, see section 539E(f) of Pub. L. 117-81, set out as a note under section 853 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 531(d) of 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 531(p) of Pub. L. 115-91, set out as a note under section 801 of this title.

Amendment by section 1081(c)(1)(H) of 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

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.

§ 854. Art. 54. Record of trial

(a) GENERAL AND SPECIAL COURTS-MARTIAL.—Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a court-reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the President may prescribe by regulation.

(b) SUMMARY COURTS-MARTIAL.—Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be certified in the manner required by such regulations as the President may prescribe.

(c) CONTENTS OF RECORD.—(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation.

(2) In accordance with regulations prescribed by the President, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(d) COPY TO ACCUSED.—A copy of the record of the proceedings of each general and special