

to Pub. L. 114-328, §5541(5). See 2016 Amendment note below.

Pub. L. 115-91, div. A, title V, §531(f)(3), Dec. 12, 2017, 131 Stat. 1385, added item 858a and struck out former item 858a “Sentences: reduction in enlisted grade upon approval”.

2016—Pub. L. 114-328, div. E, title LXIII, §5541(5), 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, substituted “Sentencing” for “Maximum and minimum limits” in item 856 and struck out items 856a “Art. 56a. Sentence of confinement for life without eligibility for parole” and 857a “Art. 57a. Deferment of sentences”.

2013—Pub. L. 113-66, div. A, title XVII, §1705(a)(2)(B), Dec. 26, 2013, 127 Stat. 959, substituted “Maximum and minimum limits” for “Maximum limits” in item 856.

1997—Pub. L. 105-85, div. A, title V, §581(a)(2), Nov. 18, 1997, 111 Stat. 1760, added item 856a.

1996—Pub. L. 104-106, div. A, title XI, §§1122(a)(2), 1123(b), Feb. 10, 1996, 110 Stat. 463, 464, added items 857a and 858b.

1960—Pub. L. 86-633, §1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
855	50:636.	May 5, 1950, ch. 169, §1 (Art. 55), 64 Stat. 126.

The word “may” is substituted for the word “shall”.

§ 856. Art. 56. Sentencing

(a) SENTENCE MAXIMUMS.—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) SENTENCE MINIMUMS FOR CERTAIN OFFENSES.—(1) Except as provided in subsection (c)¹ of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is

punishable under section 881 of this title (article 81).

(c) IMPOSITION OF SENTENCE.—

(1) IN GENERAL.—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on—

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence—

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

(iv) to promote adequate deterrence of misconduct;

(v) to protect others from further crimes by the accused;

(vi) to rehabilitate the accused; and

(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service;

(D) the sentences available under this chapter; and

(E) the applicable sentencing parameters or sentencing criteria set forth in regulations prescribed by the President pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022.

(2) APPLICATION OF SENTENCING PARAMETERS IN GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) REQUIREMENT TO SENTENCE WITHIN PARAMETERS.—Except as provided in subparagraph (B), in a general or special court-martial in which the accused is convicted of an offense for which the President has established a sentencing parameter pursuant to section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, the military judge shall sentence the accused for that offense within the applicable parameter.

(B) EXCEPTION.—The military judge may impose a sentence outside a sentencing parameter upon finding specific facts that warrant such a sentence. If the military judge imposes a sentence outside a sentencing parameter under this subparagraph, the military judge shall include in the record a written statement of the factual basis for the sentence.

(3) USE OF SENTENCING CRITERIA IN GENERAL AND SPECIAL COURTS-MARTIAL.—In a general or special court-martial in which the accused is convicted of an offense for which the President has established sentencing criteria pursuant to section 539E(e) of the National Defense Au-

¹ See References in Text note below.