

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.

thorization Act for Fiscal Year 2022, the military judge shall consider the applicable sentencing criteria in determining the sentence for that offense.

(4) **OFFENSE-BASED SENTENCING IN GENERAL AND SPECIAL COURTS-MARTIAL.**—In announcing the sentence under section 853 of this title (article 53) in a general or special court-martial, the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(5) **INAPPLICABILITY TO DEATH PENALTY.**—Sentencing parameters and sentencing criteria shall not apply to a determination of whether an offense should be punished by death.

(6) **SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.**—

(A) **IN GENERAL.**—If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) **TERM OF CONFINEMENT.**—An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(i) the sentence is set aside or otherwise modified as a result of—

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure or review under any other provision of subchapter IX of this chapter;

(ii) the sentence is set aside or otherwise modified as a result of action taken by a court of competent jurisdiction; or

(iii) the accused receives a pardon or another form of Executive clemency.

(d) **APPEAL OF SENTENCE BY THE UNITED STATES.**—(1) With the approval of the Judge Advocate General concerned, and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

(A) the sentence violates the law;

(B) in the case of a sentence for 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 sentence is a result of an incorrect application of the parameter; or

(C) the sentence is plainly unreasonable.

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 113-66, div. A, title XVII, §1702(a)(1), (2)(A), Dec. 26, 2013, 127 Stat. 959; Pub. L. 114-328, div. E, title LVIII, §5301(a), Dec. 23, 2016, 130 Stat. 2919; Pub. L. 115-91, div. A, title V, §531(e), Dec. 12, 2017, 131

Stat. 1385; Pub. L. 117-81, div. A, title V, §539E(c), title X, §1081(a)(14), Dec. 27, 2021, 135 Stat. 1701, 1920.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
856	50:637.	May 5, 1950, ch. 169, §1 (Art. 56), 64 Stat. 126.

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

Editorial Notes

REFERENCES IN TEXT

Subsection (c) of section 853a of this title, referred to in subsec. (b)(1), was redesignated subsec. (d) of section 853a of this title by Pub. L. 117-81, div. A, title V, §539E(b)(1), Dec. 27, 2021, 135 Stat. 1701.

Section 539E(e) of the National Defense Authorization Act for Fiscal Year 2022, referred to in subsecs. (c)(1)(E), (2)(A), (3), (d)(1)(B), is section 539E(e) of Pub. L. 117-81, which is set out as a note below.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 117-81, §1081(a)(14), substituted “subsection (c) of section 853a” for “subsection (d) of section 853a”.

Subsec. (c)(1)(E). Pub. L. 117-81, §539E(c)(1)(A), added subpar. (E).

Subsec. (c)(2) to (6). Pub. L. 117-81, §539E(c)(1)(B), added pars. (2) to (6) and struck out former pars. (2) to (4) which related to sentencing by military judge, sentencing by members, and sentence of confinement for life without eligibility for parole, respectively.

Subsec. (d)(1)(B). Pub. L. 117-81, §539E(c)(4)(C), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (d)(1)(C). Pub. L. 117-81, §539E(c)(4)(D), struck out “, as determined in accordance with standards and procedures prescribed by the President” after “unreasonable”.

Pub. L. 117-81, §539E(c)(4)(A), (B), redesignated subpar. (B) as (C).

2017—Subsec. (d)(1). Pub. L. 115-91, §531(e)(1), inserted “and consistent with standards and procedures set forth in regulations prescribed by the President,” after “concerned,” in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 115-91, §531(e)(2), inserted “, as determined in accordance with standards and procedures prescribed by the President” before period at end.

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to maximum and minimum sentencing limits.

2013—Pub. L. 113-66 substituted “Maximum and minimum limits” for “Maximum limits” in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 539E(c) 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 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.

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 2013 AMENDMENT

Amendment by Pub. L. 113-66 effective 180 days after Dec. 26, 2013, and applicable to offenses specified in subsec. (b)(2) of this section committed on or after that date, see section 1705(c) of Pub. L. 113-66, set out as a note under section 818 of this title.

ESTABLISHMENT OF SENTENCING PARAMETERS AND SENTENCING CRITERIA

Pub. L. 117-81, div. A, title V, §539E(e), Dec. 27, 2021, 135 Stat. 1704, provided that:

“(1) IN GENERAL.—Not later than two years after the date of the enactment of this Act [Dec. 27, 2021], the President shall prescribe regulations establishing sentencing parameters and sentencing criteria related to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), in accordance with this subsection. Such parameters and criteria—

“(A) shall cover sentences of confinement; and

“(B) may cover lesser punishments, as the President determines appropriate.

“(2) SENTENCING PARAMETERS.—Sentencing parameters established under paragraph (1) shall—

“(A) identify a delineated sentencing range for an offense that is appropriate for a typical violation of the offense, taking into consideration—

“(i) the severity of the offense;

“(ii) the guideline or offense category that would apply to the offense if the offense were tried in a United States district court;

“(iii) any military-specific sentencing factors;

“(iv) the need for the sentencing parameter to be sufficiently broad to allow for individualized consideration of the offense and the accused; and

“(v) any other relevant sentencing guideline.

“(B) include no fewer than 5 and no more than 12 offense categories;

“(C) assign such offense under this chapter [probably should be “chapter 47 of title 10, United States Code (the Uniform Code of Military Justice)"] to an offense category unless the offense is identified as unsuitable for sentencing parameters under paragraph (4)(F)(ii); and

“(D) delineate the confinement range for each offense category by setting an upper confinement limit and a lower confinement limit.

“(3) SENTENCING CRITERIA.—Sentencing criteria established under paragraph (1) shall identify offense-specific factors the military judge should consider and any collateral effects of available punishments that may aid the military judge in determining an appropriate sentence when there is no applicable sentencing parameter for a specific offense.

“(4) MILITARY SENTENCING PARAMETERS AND CRITERIA BOARD.—

“(A) IN GENERAL.—There is established within the Department of Defense a board, to be known as the ‘Military Sentencing Parameters and Criteria Board’ (referred to in this subsection as the ‘Board’).

“(B) VOTING MEMBERS.—The Board shall have 5 voting members, as follows:

“(i) The 4 chief trial judges designated under section 826(g) of title 10, United States Code (article 26(g) of the Uniform Code of Military Justice), except that, if the chief trial judge of the Coast Guard is not available, the Judge Advocate General of the Coast Guard may designate as a voting member a judge advocate of the Coast Guard with substantial military justice experience.

“(ii) A trial judge of the Navy, designated under regulations prescribed by the President, if the chief

trial judges designated under section 826(g) of title 10, United States Code (article 26(g) of the Uniform Code of Military Justice), do not include a trial judge of the Navy.

“(iii) A trial judge of the Marine Corps, designated under regulations prescribed by the President, if the chief trial judges designated under section 826(g) of title 10, United States Code (article 26(g) of the Uniform Code of Military Justice), do not include a trial judge of the Marine Corps.

“(C) NONVOTING MEMBERS.—The Chief Judge of the Court of Appeals for the Armed Forces, the Chairman of the Joint Chiefs of Staff, and the General Counsel of the Department of Defense shall each designate one nonvoting member of the Board. The Secretary of Defense may appoint one additional nonvoting member of the Board at the Secretary’s discretion.

“(D) CHAIR AND VICE-CHAIR.—The Secretary of Defense shall designate one voting member as chair of the Board and one voting member as vice-chair.

“(E) VOTING REQUIREMENT.—An affirmative vote of at least three members is required for any action of the Board under this subsection.

“(F) DUTIES OF BOARD.—The Board shall have the following duties:

“(i) As directed by the Secretary of Defense, the Board shall submit to the President for approval—

“(I) sentencing parameters for all offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) (other than offenses that the Board identifies as unsuitable for sentencing parameters in accordance with clause (ii)); and

“(II) sentencing criteria to be used by military judges in determining appropriate sentences for offenses that are identified as unsuitable for sentencing parameters in accordance with clause (ii).

“(ii) Identify each offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that is unsuitable for sentencing parameters. The Board shall identify an offense as unsuitable for sentencing parameters if—

“(I) the nature of the offense is indeterminate and unsuitable for categorization; and

“(II) there is no similar criminal offense under the laws of the United States or the laws of the District of Columbia.

“(iii) In developing sentencing parameters and criteria, the Board shall consider the sentencing data collected by the Military Justice Review Panel pursuant to section 946(f)(2) of title 10, United States Code (article 146(f)(2) of the Uniform Code of Military Justice).

“(iv) In addition to establishing parameters for sentences of confinement under clause (i)(I), the Board shall consider the appropriateness of establishing sentencing parameters for punitive discharges, fines, reductions, forfeitures, and other lesser punishments authorized under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

“(v) The Board shall regularly—

“(I) review, and propose revision to, in consideration of comments and data coming to the Board’s attention, the sentencing parameters and sentencing criteria prescribed under paragraph (1); and

“(II) submit to the President, through the Secretary of Defense, proposed amendments to the sentencing parameters and sentencing criteria, together with statements explaining the basis for the proposed amendments.

“(vi) The Board shall develop means of measuring the degree to which applicable sentencing, penal, and correctional practices are effective with respect to the sentencing factors and policies set forth in this section.

“(vii) In fulfilling its duties and in exercising its powers, the Board shall consult authorities on, and individual and institutional representatives of, var-

ious aspects of the military criminal justice system. The Board may establish separate advisory groups consisting of individuals with current or recent experience in command and in senior enlisted positions, individuals with experience in the trial of courts-martial, and such other groups as the Board deems appropriate.

“(viii) The Board shall submit to the President, through the Secretary of Defense, proposed amendments to the rules for courts-martial with respect to sentencing proceedings and maximum punishments, together with statements explaining the basis for the proposed amendments.”

GUIDELINES ON SENTENCES FOR OFFENSES COMMITTED UNDER THE UNIFORM CODE OF MILITARY JUSTICE

Pub. L. 116-92, div. A, title V, §537, Dec. 20, 2019, 133 Stat. 1363, which required the Secretary of Defense to develop nonbinding guidelines on sentences for offenses under chapter 47 of this title, not later than one year after date on which first report of Military Justice Review Panel is submitted to Committees on Armed Services of Senate and House of Representatives pursuant to section 946(f)(5) of this title, was repealed by Pub. L. 117-81, div. A, title V, §539E(g), Dec. 27, 2021, 135 Stat. 1706. See section 539E(e) of Pub. L. 117-81, set out as a note above.

Executive Documents

PREScription OF METHOD OF DESIGNATING A MEMBER OF THE MILITARY SENTENCING PARAMETERS AND CRITERIA BOARD

Memorandum of President of the United States, June 21, 2022, 87 F.R. 37971, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 539E(e)(4)(B) of the National Defense Authorization Act for Fiscal Year 2022, Public Law 117-81, 135 Stat. 1541, 1700 (2021) [set out in a note above], I hereby order as follows:

(1) If the chief trial judges designated under article 26(g) of the Uniform Code of Military Justice, 10 U.S.C. 826(g), do not include a trial judge of the Navy, then the Judge Advocate General of the Navy shall designate as a voting member of the Military Sentencing Parameters and Criteria Board (Board) either the Chief Judge of the Department of the Navy or a Navy trial judge assigned to the Navy and Marine Corps Trial Judiciary.

(2) If the chief trial judges designated under article 26(g) of the Uniform Code of Military Justice, 10 U.S.C. 826(g), do not include a trial judge of the Marine Corps, then the Staff Judge Advocate to the Commandant of the Marine Corps, in consultation with the Judge Advocate General of the Navy, shall designate as a voting member of the Board a Marine Corps trial judge assigned to the Navy and Marine Corps Trial Judiciary.

This memorandum constitutes the regulations provided for in subsections (ii) and (iii) of section 539E(e)(4)(B) of the National Defense Authorization Act for Fiscal Year 2022.

You are authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

[§ 856a. Repealed. Pub. L. 114-328, div. E, title LVIII, § 5301(b), Dec. 23, 2016, 130 Stat. 2920]

Section, added Pub. L. 105-85, div. A, title V, §581(a)(1), Nov. 18, 1997, 111 Stat. 1759, related to sentence of confinement for life without eligibility for parole.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provi-

sions 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.

§ 857. Art. 57. Effective date of sentences

(a) EXECUTION OF SENTENCES.—A court-martial sentence shall be executed and take effect as follows:

(1) FORFEITURE AND REDUCTION.—A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) CONFINEMENT.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) DEFERRAL OF SENTENCES.—