

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to Committees on Armed Services of Senate and House of Representatives pursuant to section 946(f)(5) of this title, was repealed by Pub.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.—

(1) **IN GENERAL.**—On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) **DEFERRAL OF CERTAIN PERSONS SENTENCED TO CONFINEMENT.**—In any case in which a court-martial sentences a person referred to in paragraph (3) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(3) **COVERED PERSONS.**—Paragraph (2) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(4) **STATE DEFINED.**—In this subsection, the term “State” includes the District of Columbia and any Commonwealth, territory, or possession of the United States.

(5) **DEFERRAL WHILE REVIEW PENDING.**—In any case in which a court-martial sentences a person to confinement, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(c) **APPELLATE REVIEW.**—

(1) **COMPLETION OF APPELLATE REVIEW.**—Appellate review is complete under this section when—

(A) a review under section 865 of this title (article 65) is completed; or

(B) a review under section 866 of this title (article 66) is completed by a Court of Criminal Appeals and—

(i) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(ii) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(iii) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(I) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(II) such a petition is rejected by the Supreme Court; or

(III) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) **COMPLETION AS FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.**—The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90-632, §2(24), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98-209, §5(f), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 102-484, div. A, title X, §1064, Oct. 23, 1992, 106 Stat. 2505; Pub. L. 104-106, div. A, title XI, §§1121(a), 1123(a)(1), (2), Feb. 10, 1996, 110 Stat. 462-464; Pub. L. 114-328, div. E, title LVIII, §5302(a), Dec. 23, 2016, 130 Stat. 2921.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
857(a) .....	50:638(a).	May 5, 1950, ch. 169, §1 (Art. 57), 64 Stat. 126.
857(b) .....	50:638(b).	
857(c) .....	50:638(c).	

In subsection (a), the word “may” is substituted for the word “shall”.

In subsection (b), the word “begins” is substituted for the words “shall begin”.

In subsection (c), the word “are” is substituted for the words “shall become”.

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to effective date of sentences.

1996—Subsec. (a). Pub. L. 104-106, §1121(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).”

Subsecs. (d), (e). Pub. L. 104-106, §1123(a)(1), (2), redesignated subsecs. (d) and (e) as section 857a(a) and (b), respectively, of this title.

1992—Subsec. (e). Pub. L. 102-484 added subsec. (e).

1983—Subsec. (a). Pub. L. 98-209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

1968—Subsec. (a). Pub. L. 90-632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90-632 inserted reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90-632 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 applica-

bility 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 1996 AMENDMENT

Pub. L. 104-106, div. A, title XI, §1121(b), Feb. 10, 1996, 110 Stat. 462, provided that: “The amendment made by subsection (a) [amending this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note 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.

### [§ 857a. Repealed. Pub. L. 114-328, div. E, title LVIII, § 5302(b)(1), Dec. 23, 2016, 130 Stat. 2923]

Section, added Pub. L. 90-632, §2(24), Oct. 24, 1968, 82 Stat. 1341, §857(d); amended Pub. L. 102-484, div. A, title X, §1064, Oct. 23, 1992, 106 Stat. 2505; renumbered § 857a and amended Pub. L. 104-106, div. A, title XI, §1123(a), Feb. 10, 1996, 110 Stat. 463, related to deferment of sentence to confinement.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Repeal 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.

### § 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(b) The omission of the words “hard labor” from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

#### HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
858(a) .....	50:639(a).	May 5, 1950, ch. 169, §1 (Art. 58), 64 Stat. 126.
858(b) .....	50:639(b).	

In subsection (a), the words “Secretary concerned” are substituted for the words “Department concerned”, since the “Department” as an entity, cannot issue instructions. The word “are” is substituted for the words “shall be”. The words “of Columbia” are inserted after “District” for clarity.

In subsection (b), the word “from” is substituted for the word “in”. The words “does not deprive” are substituted for the words “shall not be construed as depriving”.

#### Editorial Notes

##### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163 struck out “Territory,” after “State.”.

### § 858a. Art. 58a. Sentences: reduction in enlisted grade

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as set forth in the judgment of the court-martial entered into the record under section 860c of this title (article 60c), that includes—

- (1) a dishonorable or bad-conduct discharge;
- (2) confinement; or
- (3) hard labor without confinement;

reduces that member to pay grade E-1, if such a reduction is authorized by regulation prescribed by the President. The reduction in pay grade shall take effect on the date on which the judgment is so entered.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or reduced, or, as finally affirmed, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86-633, §1(1), July 12, 1960, 74 Stat. 468; amended Pub. L. 114-328, div. E, title LVIII, §5303, Dec. 23, 2016, 130 Stat. 2923; Pub. L. 115-91, div. A, title V, §531(f)(1), (2), Dec. 12, 2017, 131 Stat. 1385.)

#### Editorial Notes

##### AMENDMENTS

2017—Pub. L. 115-91, §531(f)(2), struck out “upon approval” after “reduction in enlisted grade” in section catchline.

Subsec. (a). Pub. L. 115-91, §531(f)(1), substituted “, if such a reduction is authorized by regulation prescribed by the President. The reduction in pay grade shall take