

The words "the Canal Zone, Guam, American Samoa, and the Virgin Islands as well as to 111 other" are omitted as covered by the words "possessions, and all other places under its jurisdiction".

AMENDMENTS

1987-Pub. L. 100-180 renumbered section 774 of this title as this section.

Pub. L. 100-26 amended directory language of Pub. L. 99-661. See 1986 Amendment note below.

1986-Pub. L. 99-661, as amended by Pub. L. 100-26, amended section generally. Prior to amendment, section read as follows: "This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction."

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(a) of Pub. L. 100-26 provided that: "The amendments made by section 3 amending sections 775, 1032, 1408, 1450, 1588, 2007, 2364, and 5150 of this title and section 4703 of Title 20, Education, and amending provisions set out as a note under section 1006 of Title 37, Pay and Allowances of the Uniformed Services1 shall apply as if included in Public Law 99-661 when enacted on November 14, 1986."

CHAPTER 47 - UNIFORM CODE OF MILITARY JUSTICE

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AMENDMENTS

1983-Pub. L. 98-209, § 5(h)(l), Dec. 6, 1983, 97 Stat. 1400, substituted "IX. Post-Trial Procedure and Review of Courts-Martial" for "IX. Review of Courts-Martial".

1958-Pub. L. 85-861, § 33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

CROSS REFERENCES

Retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

CHAPTER REFERRED TO IN OTHERS SECTIONS

This chapter is referred to in sections 951, 955, 1037, 1094, 1552, 1553, 5148 of this title; title 5 sections 8312, 8313, 8331, 8401; title 18 sections 3551, 4247; title 28 section 535; title 37 section 559; title 42 sections 217, 10601; title 49 App. sections 1471, 1655; title 50 App. section 473.

SUBCHAPTER I - GENERAL PROVISIONS

Sec. Art.

- 801. 1. Definitions.
- 802. 2. Persons subject to this chapter.
- 803. 3. Jurisdiction to try certain personnel.
- 804. 4. Dismissed officer's right to trial by court-martial.
- 805. 5. Territorial applicability of this chapter.
- 806. 6. Judge advocates and legal officers.

§ 801. Article 1. Definitions

In this chapter:

(1) The term "Judge Advocate General" means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term "commanding officer" includes only commissioned officers.

(4) The term "officer in charge" means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term "superior commissioned officer" means a commissioned officer superior in rank or command.

(6) The term "cadet" means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term "midshipman" means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term "military" refers to any or all of the armed forces.

(9) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term "military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) The term "law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

(12) The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term "judge advocate" means-

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) The term "record", when used in connection with the proceedings of a court-martial, means-

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Oct. 15, 1966, Pub. L. 89-670, § 10(g), 80 Stat. 948; Dec. 8, 1967, Pub. L. 90-179, § 1(1), (2), 81 Stat. 545; Oct. 24, 1968, Pub. L. 90-632, § 2(1), 82 Stat. 1335; Dec. 6, 1983, Pub. L. 98-209, §§ 2(a), 6(a), 97 Stat. 1393, 1400; Dec. 4, 1987, Pub. L. 100-180, div. A, title XII, § 1231(17), 101 Stat. 1161; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, § 1233(f)(1), 102 Stat. 2057.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
801	50:551 (less (9)).	May 5, 1950, ch. 169, § 1 (Art. 1) (less (9)), 64 Stat. 108

The words "In this chapter" are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word "chapter" is substituted for the word "code".

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words "commissioned officer" are substituted for the word "officer" for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)-(7), and (9)-(12) of the revised section, the word "means" is substituted for the words "shall be construed to refer to" and "shah be construed to refer l l l to".

In clause (1), the words "service in" are substituted for the words "part of" to conform to section 1 of title 14. The words "Department of the Treasury" are substituted for the words "Treasury Department".

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words "the United States Air Force Academy" are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word "refers" is substituted for the words "shall be construed to refer".

In clause (12), the words "Marine Corps" are inserted to make explicit that the clause applies to the Marine Corps. The word "commissioned" is inserted for clarity.

AMENDMENTS

1988-Cl. (1). Pub. L. 100-456 substituted "term 'Judge' for "term 'judge".

1987-Cls. (1), (3) to (14). Pub. L. 100-180 inserted "The term" after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983-Cl. (13). Pub. L. 98-209, sec. 2(a), added officers of the Coast Guard who are designated as law specialists to definition of "Judge Advocate".

Cl. (14). Pub. L. 98-209, sec. 6(a), added cl. (14).

1968-Cl. (10). Pub. L. 90-632 substituted "military judge" for "law officer" as term being defined and inserted reference to special court-martial in the definition thereof.

1967-Cl. (11). Pub. L. 90-179, sec. 1(1), struck out "Navy or" before "Coast Guard".

Cl. (13). Pub. L. 90-179, sec. (2), added cl. (13).

1966 - Pub. L. 89-670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of "Judge Advocate General" applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 12(a) of Pub. L. 98-209 provided that:

"(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

"(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

"(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

"(4) The amendments made by sections 5, 6, and 7 [amending sections 801, 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendment-s. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

"(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments."

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of Pub. L. 90-632 provided that:

"(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [Oct. 24, 1968].

"(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1963].

"(c) The amendment made by paragraph (33) [amending section 873 of this title] shah apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly sec. 15(a), of Pub. L. 89-670, and Ex. Ord. No. 11340, Mar. 30, 1967,

32 F.R. 5453, set out as notes under section 1651 of Title 49, Appendix, Transportation.

EFFECTIVE DATE

Section 51 of act Aug. 10, 1956, provided that this chapter shall take effect Jan. 1, 1957.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, sec. 801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: "This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 643, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the 'Military Justice Amendments of 1986'."

SHORT TITLE OF 1983 AMENDMENT

Section 1(a) of Pub. L. 98-209 provided that: "This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending sections 801, 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-81, sec. 1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: "This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838, 867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Amendments of 1981'."

SHORT TITLE OF 1968 AMENDMENT

Section 1 of Pub. L. 90-632 provided: "That this Act [amending sections 801, 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under sections 801, 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'."

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90-179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties and proceedings not affected by Pub. L. 90-179 establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90-179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Section 49(e) of act Aug. 10, 1956, provided that: "In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter."

CROSS REFERENCES

Appointment and duties-

General Counsel of Department of Transportation, see section 102 of Title 49, Transportation.
Judge Advocates General of the Army, Navy, and Air Force, see sections 3037, 5148 and 8037 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1044 of this title; title 42 section 665.

§802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while on inactivated duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who -

(1) submitted voluntarily to military authority:

HISTORICAL AND REVISION NOTES

1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
802	50:552.	May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

In clause (1), the words "Members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8), the words "of the United States" are omitted as surplusage.

In clause (3), the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4), the word "receive" is omitted as surplusage.

In clauses (4) and (5), the word "members" is substituted for the word "personnel".

In clause (8), the word "members" is substituted for the word "personnel".

In clauses (11) and (12), the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words "the provision of," "all", and "territories" are omitted as surplusage.

In clause (12), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

1962 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
802(11), (12).	50:552(11) and (12),	Aug. 1, 1956, ch. 852, § 23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

AMENDMENTS

1988 - Subsec. (a)(11), (12). Pub. L. 100-456 struck out "the Canal Zone." before "the Commonwealth".

1986 - Subsec. (a)(3). Pub. L. 99-661, §804(a)(l), substituted "on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service" for "they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter".

subsec. (d). Pub. L. 99-661, § 804(a)(2), added subsec. (d).

1983 - Subsec. (a)(11), (12). Pub. L. 98-209, sec. 13(a)(l), substituted "outside the Canal Zone" for "outside the following: the Canal Zone" and inserted "the Commonwealth of" before "Puerto Rico".

Subsec. (b). Pub. L. 98-209, sec. 13(a)(2), struck out "of this section" after "subsection (a)".

1980 - Subsec. (a)(8). Pub. L. 96-513 substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration".

1979 - Pub. L. 96-107 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1966 Pub. L. 89-718 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey" in cl. (8).

1963 - Pub. L. 87-651 inserted "Guam." after "Puerto Rico." incls. (11) and (12).

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority:

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of-

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was-

(A) on active duty; or

(B) on inactiveduty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not -

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; June 25, 1959, Pub. L. 86-70, sec. 6(b), 73 Stat. 142; July 12, 1960, Pub. L. 86-624, sec. 4(b), 74 Stat. 411; Sept. 7, 1962, Pub. L. 87-651, title I, sec. 104, 76 Stat. 508; Nov. 2, 1966, Pub. L. 89-718, sec. 8(a), 80 Stat. 1117; Nov. 9, 1979, Pub. L. 96-107, title VIII, sec. 801(a), 93 Stat. 810; Dec. 12, 1980, Pub. L. 96-513, title V, sec. 511(24), 94 Stat. 2922; Dec. 6, 1983, Pub. L. 98-209, sec. 13(a), 97 Stat. 1408; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, sec. 804(a), 100 Stat. 3906; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, sec. 1234(a)(l), 102 Stat. 2059.)

1960-Pub. L. 86-624 struck out "the main group of the Hawaiian Islands," before "Puerto Rico" in cls. (11) and (12).

1959-Pub. L. 86-70 struck out "that part of Alaska east of longitude 172 degrees west," before "the Canal Zone" in cls. (11) and (12).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(e) of Pub. L. 99-661 provided that: "The amendments made by subsections (a) and (b) [amending sections 802 and 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99-661, set out below]."

Section 808 of Pub. L. 99-661 provided that: "Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843 and 806, respectively, of this title] this title and the amendments made by this title [enacting section 850a of this title, amending sections 802 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 801, 802, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of-

"(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

"(2) the date specified in an Executive order for such amendments to take effect."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

REPEALS

Pub. L. 89-718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

Ex. ORD. No. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and with-

stand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the

custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 804(b), 100 Stat. 3907.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
803(a)	50:553(a).	May 5, 1950, ch. 169, § 1
603(b)	50:553(b).	(Art. 3), 64 stat. 109.
603(c)	50:553(c).	

In subsection (a), the words "the provisions of" are omitted as surplusage. The words "no *** may" are substituted for the words "any *** shall not". The word "for" is substituted for the word "of" before the words "five years". The words "of a State, a Territory, or" are substituted for the words "any State or Territory thereof or of". The word "court-martial" is substituted for the word "courts-martial".

In subsection (b), the words "Each person" are substituted for the words "All persons". The words "who is later" are substituted for the word "subsequently". The words "his discharge is" are substituted for the words "said discharge shall *** be". The words "the provisions of" are omitted as surplusage. The word "is" is substituted for the words "shall *** be". The words "he is" are substituted for the words "they shall be". The word "before" is substituted for the words "prior to".

In subsection (c), the words "No l*** may" are substituted for the words "Any *** shall not". The word "later" is substituted for the word "subsequent".

AMENDMENTS

1986-Subsec. (d). Pub. L. 99-661 added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99-661, set out as notes under section 802 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable,

shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
804 (a)	50:554 (a).	May 5, 1950, ch. 169, § 1
804 (b)	50:554 (b).	(Art. 4), 64 Stat. 110.
804 (c)	50:554 (c).	
804 (d)	50:554 (d).	

In subsection (a), the word "If" is substituted for the word "When". The word "commissioned" is inserted before the word "officer". The word "considered" is substituted for the word "held".

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "If" is substituted for the word "Where". The words "the authority of" are omitted as surplusage. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not to a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position" for clarity. The word "receive" is omitted as surplusage.

In subsection (d), the word "If" is substituted for the word "When". The words "he has no" are substituted for the words "there shall not be a".

CROSS REFERENCES

Limitations on dismissal of commissioned officers, see section 1161 of this title.

§ 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
805	50:555.	May 5, 1950, ch. 169, § 1 (Art. 5), 64 Stat. 110.

The word "applies" is substituted for the words "shall be applicable".

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d) (1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Dec. 8, 1967, Pub. L. 90-179, § 1(3), 81 Stat. 545; Oct. 24, 1968, Pub. L. 90-632, § 2(2), 82 Stat. 1335; Dec. 6, 1983, Pub. L. 98-209, § 2(b), 97 Stat. 1393; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 807(a), 100 Stat. 3909.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
806(a)	50:556(a).	May 5, 1950, ch. 169, § 1 (Art. 6), 64 Stat. 110.
806(b)	50:556(b).	
806(c)	50:556(c).	

In subsection (b), the word "entitled" is substituted for the word "authorized".

In subsection (c), the words "may later" are substituted for the words "shall subsequently".

AMENDMENTS

1986-Subsec. (d). Pub. L. 99-661 added subsec. (d).
 1983-Subsec. (a). Pub. L. 98-209 substituted "Air Force, and" for "and Air Force and law specialists of the".

1968-Subsec. (c). Pub. L. 90-632 substituted "military judge" for "law officer".

1967-Subsec. (a). Pub. L. 90-179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 807(b) of Pub. L. 99-661 provided that: "The amendment made by subsection (a) [amending this section]-

"(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

"(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Judge Advocate General's Corps of the Army, see section 3072 of this title.

Judge Advocates of the Air Force, see section 8067 of this title.

Oaths, administration of: notary, general powers of, see section 936 of this title.

SUBCHAPTER II-APPREHENSION AND RESTRAINT

Sec.	Art.	
807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged with offenses.
811.	11.	Reports and receiving of prisoners.
812.	12.	Confinement with enemy prisoners prohibited.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
807(a)	50:561(a).	May 5, 1950, ch. 169, § 1 Art. 7), 64 Stat. 111.
807(b)	50:561(b).	
807(c)	50:561(c).	

In subsection (a), the words "into custody" and "of a person" are transposed.

In subsection (c), the words "All" and "shall" are omitted as surplusage. The word "Commissioned" is inserted before the word "officers" for clarity. The word "therein" is substituted for the words "in the same".

CROSS REFERENCES

Arrest and commitment, see section 3041 et seq. of Title 18, Crimes and Criminal Procedure.

Article to be explained, see section 937 of this title.

Expenses and rewards for apprehension and delivery of deserters, prisoners, and members absent without leave, see section 956 of this title.

Expenses for apprehension and delivery of deserters, stragglers, and prisoners of the Navy, see section 7214 of this title.

Resistance, breach of arrest, and escape, punishment, see section 895 of this title.

Unlawful detention, punishment, see section 897 of this title.

SECTION REFERRED TO IN OTHERS SECTIONS

This section is referred to in section 937 of this title.

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
808	50:562.	May 5, 1950, ch. 169, § 1 (Art. 8), 64 Stat. 111.

The word "may" is substituted for the words "It shall be lawful for 111 to". The words "a State, Territory, Commonwealth, or possession, or the District of Columbia" are substituted for the words "any State, District, Territory, or possession of the United States". The words "of the United States", before the words "and deliver", are omitted as surplusage. The words "those forces" are substituted for the words "the armed forces of the United States", after the words "custody of".

CROSS REFERENCES

Arrest and commitment, see section 3041 et seq. of Title 18, Crimes and Criminal Procedure.

Article to be explained, see section 937 of this title.

Resistance, breach of arrest, and escape, punishment, see section 895 of this title.

Unlawful detention, punishment, see section 897 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statute at Large)</i>
809(a)	50:563(a).	May 5, 1950, ch. 169, § 1 (Art. 9), 64 Stat. 111.
809(b)	50:563(b).	
809(c)	50:563(c).	
809(d)	50:563(d).	
809(e)	50:563(e).	

In subsection (b), the word "commissioned" is inserted before the word "officer" for clarity. The words "member" and "members", respectively, are substituted for the words "person" and "persons".

In subsection (c), the words "A commissioned" are substituted for the word "An" for clarity. The word "commissioned" is inserted after the word "another" for clarity.

In subsection (d), the word "may" is substituted for the word "shall".

In subsection (e), the word "limits" is substituted for the words "shall be construed to limit".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Forwarding of charges, time of, see section 833 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 810. Art. 10. Restraint of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
810	50:564.	May 5, 1950, ch. 169, § 1 (Art. 10), 64 Stat. 111.

The word "he" is substituted for the words "such person".

CROSS REFERENCES

Article to be explained, see section 937 of this title. Enlisted members required to make up time lost, see section 972 of this title.

Summary courts-martial, jurisdiction of, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
811(a)	50:565(a).	May 5, 1950, ch. 169, § 1 (Art. 11), 64 Stat. 112.
811(b)	50:565(b).	

In subsection (a), the word "may" is substituted for the word "shall". The words "a commissioned" are substituted for the word "an" for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
812.....	50:556.	May 5, 1950, ch. 169, § 1 (Art. 12), 64 Stat. 112.

The words "of the United States" are omitted as surplusage. The word "may" is substituted for the word "shall".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infraction of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Nov. 20, 1981, Pub. L. 97-81, sec. 3, 95 Stat. 1087.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
813.....	50:567.	May 5, 1950, ch. 169, § 1 (Art. 13), 64 Stat. 112.

The words "the provisions of" are omitted as surplusage. The word "results" is changed to the singular. The word "may" is substituted for the word "shall".

AMENDMENTS

1981 - Pub. L. 97-81 substituted "No person, while being held for trial, may be subjected" for "Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each person held as the result of a court-martial sentence announced on or after that date, see section 7(a) and (b)(2) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
814(a)	50:568(a).	May 5, 1950, ch. 169, § 1
814(b)	50:568(b).	(Art. 14), 64 Stat. 112.

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (b), the word "interrupts" is substituted for the words "shall be held to interrupt". The word "his" is substituted for the words "the said court-martial".

REGULATIONS FOR DELIVERY OF MILITARY PERSONNEL TO CIVIL AUTHORITIES WHEN CHARGED WITH CERTAIN OFFENSES

Pub. L. 100-456, div. A, title VII, § 721, Sept. 29, 1988, 102 Stat. 2001, provided that:

"(a) Not later than 90 days after the date of enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall ensure that the Secretaries of the military departments have issued uniform regulations pursuant to section 814 of title 10, United States Code, to provide for the delivery of members of the Armed Forces to civilian authority when such members have been accused of offenses against civil authority. Such regulations shall specifically provide for the delivery of such members to civilian authority, in appropriate cases, when such members are accused of parental kidnapping and other similar offenses, including criminal contempt arising from such offenses and from child custody matters, and shall specifically address the special needs for the exercise of the authority contained in section 814 of title 10, United States Code, when members of the Armed Forces assigned overseas are accused of offenses by civilian authorities.

"(b) Not later than 120 days after the enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and House of Representatives a copy of all regulations promulgated under section 814 of title 10, United States Code, as a result of this section and any recommendations that the Secretary may have concerning the need for additional legislation related to the amenability of members of the Armed Forces to civil authority."

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER III — NON-JUDICIAL PUNISHMENT

Sec. Art.

§ 815. 15. Commanding officer's non-judicial punishment.

§ 815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer or general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)-(G) as the Sec-

retary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture of detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Transportation for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not proper-

ly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Sept. 7, 1962, Pub. L. 87-648, § 1, 76 Stat. 447; Dec. 8, 1967, Pub. L. 90-179, § 1(4), 81 Stat. 545; Oct. 22, 1968, Pub. L. 90-623, § 2(4), 82 Stat. 1314; Dec. 6, 1983, Pub. L. 98-209, §§ 2(c), 13(b), 97 Stat. 1393, 1408.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
815(a)	50:571 (a).	May 5, 1950, ch. 169, § 1
815(b)	50:571 (b).	(Art. 15), 64 stat. 112.
815(c)	50:571 (c).	
815(d)	50:571 (d).	
815(e)	50:571 (e).	

In subsection (a), the words “not more than” are substituted for the words “a period not to exceed”, “not to exceed”, and “a period not exceeding”.

In subsection (a)(1), the words “and warrant officers” are omitted, since the word “officer”, as defined in section 101(14) of this title, includes warrant officers.

In clause (1)(C), the words “one month’s pay” are substituted for the words “his pay per month for a period not exceeding one month”.

In subsection (b), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (c), the word “subsections” is substituted for the word “subdivisions”. The words “enlisted members” are substituted for the words “enlisted persons”.

In subsections (d) and (e), the words “authority of” are omitted as surplusage.

In subsection (d), the word “considers” is substituted for the word “deems”. The word “may” is substituted for the words “shall have power to *** to”.

In subsection (e), the words “is not” are substituted for the words “shall not be”.

AMENDMENTS

1983—Pub. L. 98-209, § 13(b)(1), substituted “non-judicial” for “nonjudicial” in section catchline.

Subsec. (b). Pub. L. 98-209, § 13(b)(2)(A), struck out “of this section” after “subsection (a)” in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98-209, § 13(b)(2)(B), substituted “clause (A)” for “subsection (b)(2)(A)”.

Subsec. (e). Pub. L. 98-209, § 2(c), substituted “or a lawyer of the” for “of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or”.

1968—Subsec. (e). Pub. L. 90-623 substituted “or a law specialist or lawyer of the Coast Guard or Department of Transportation” for “or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department”.

1967—Subsec. (e). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87-648 redesignated former subsec. (b) as (a), inserted references to such

regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary’s regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87-648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month’s pay may be ordered forfeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month’s pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month’s pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days’ pay, and detention of not more than 14 days’ pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i) to (vii) of subpar. (2) (H) upon personnel of his command other than officers. changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day. holidays included, to authorize extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year. prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount imposable for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively. and in those cases where forfeiture of pay is combined with detention of pay, defining “correctional custody”, and struck out provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87-648 substituted “under subsection (b)(2)(A)-(G) as the Secretary concerned may specifically prescribe by regulation” for “to be im-

posed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b), and deleted "for minor offenses" after "an officer in charge may".

Subsecs. (d), (e). Pub. L. 87-648 added subsec. (d), redesignated former subsec. (d) as (e), inserted provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted "The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment" for "The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected." Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 87-648 redesignated former subsec. (e) as (f) and added subsec. (g).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(l) 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. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87-648 provided that: "This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [Sept. 7, 1962]."

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Enlisted members required to make up lost time, see section 972 of this title.

Statute of limitations, see section 843 of this title.
 Summary court-martial, election to refuse commanding officer's punishment, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 843, 937 of this title; title 24 section 44.

SUBCHAPTER IV - COURT-MARTIAL JURISDICTION

- | | |
|------|---|
| sec. | Art. |
| 816. | 16. Courts-martial classified. |
| 817. | 17. Jurisdiction of courts-martial in general. |
| 818. | 18. Jurisdiction of general courts-martial. |
| 819. | 19. Jurisdiction of special courts-martial. |
| 820. | 20. Jurisdiction of summary courts-martial. |
| 821. | 21. Jurisdiction of courts-martial not exclusive. |

§ 816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

- (1) general courts-martial, consisting of—
 - (A) a military judge and not less than five members; or

- (B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

- (2) special courts-martial, consisting of—
 - (A) not less than three members; or
 - (B) a military judge and not less than three members; or
 - (C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

- (3) summary courts-martial, consisting of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Oct. 24, 1968, Pub. L. 90-632, § 2(3), 82 Stat. 1335; Dec. 6, 1983, Pub. L. 98-209, § 3(a), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>source (U.S. Code)</i>	<i>Sources (Statutes at Large)</i>
816	50:576.	May 5, 1950, ch. 169, § 1 (Art. 16), 64 Stat. 113.

The word "The" is substituted for the words "There shall be". The word "are" is substituted for the word "namely". The words "not less than five members" are substituted for the words "any number of members not less than five". The words "not less than three members" are substituted for the words "any number of members not less than three". The word "commissioned" is inserted before the word "officer" in clause (3) for clarity.

AMENDMENTS

1983-Par. (1)(B). Pub. L. 98-209 substituted "orally on the record or in writing" for "in writing".

1968-Pub. L. 90-632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(l) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 829 of this title.

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force

over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
817(a)	50:577(a).	May 5, 1950, ch. 169, § 1 (Art. 17), 64 Stat. 114.
817(b)	50:577(b).	

In subsection (a), the word "has" is substituted for the words "shall have".

In subsection (b), the word "after" is substituted for the words "subsequent to". The words "the provisions of" are omitted as surplusage. The words "department that includes the" are inserted before the words "armed force", since the review is carried out by the department and not by the armed force.

CROSS REFERENCES

Jurisdiction of -

General courts-martial, see section 818 of this title.

Special courts-martial, see section 819 of this title.

Summary courts-martial, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 819, 820 of this title.

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90-632, § 2(4), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
818.....	50:578.	May 5, 1950, ch. 169, § 1 (Art. 18), 64 Stat. 114.

The word "shall" is omitted as surplusage wherever it occurs.

AMENDMENTS

1968 - Pub. L. 90-432 provided that a general court-martial consisting of only a military judge has no Jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad-conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90-632, § 2(5), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
819	50:579.	May 5, 1950, ch. 169, § 1 (Art. 19), 64 Stat. 114.

The word "shall" in the first sentence is omitted as surplusage. The words "for more than" are substituted for the words "in excess of". The words "more than" are substituted for the words "a period exceeding". The word "may" is substituted for the word "shall" in the last sentence.

AMENDMENTS

1968 - Pub. L. 90-632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial. with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies. stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 171, summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90-632, 5 2(6), 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
820	50:580.	May 5, 1950, ch. 169, § 1 (Art. 20), 64 Stat. 114.

The word "shall" in the first sentence is omitted as surplusage. The word "may" is substituted for the word "shall" in the second sentence. The words "the provisions of" are omitted as surplusage. The word "If" is substituted for the word "Where". The words "for more than" are substituted for the words "in excess of". The words "more than" are substituted for the words "pay in excess of".

AMENDMENTS

1968 - Pub. L. 90-632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Confinement not ordinarily ordered for person charged with offense normally tried by summary court-martial, see section 810 of this title.

Inquests: disposition of effects of deceased persons, see sections 4711, 4712, 9711, 9712 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive

military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
821	50:581.	May 5, 1950, ch. 169, § 1 (Art. 21), 64 Stat. 115.

The words "do not deprive" are substituted for the words "shall not be construed as depriving". The words "with respect to" are substituted for the words "in respect of".

CROSS REFERENCES

Judge Advocate Generals of Army, Navy, and Air Force to receive, revise, and have recorded proceedings of military commissions, see sections 3037, 5148, 8037 of this title.

SUBCHAPTER V - COMPOSITION OF COURTS-MARTIAL

sec. Art.

- 822. 22. Who may convene general courts-martial.
- 823. 23. Who may convene special courts-martial.
- 824. 24. Who may convene summary courts-martial-
- 825. 25. Who may serve on courts-martial.
- 826. 26. Military judge of a general or special court-martial.
- 827. 27. Detail of trial counsel and defense counsel.
- 828. 28. Detail or employment of reporters and interpreters.
- 829. 29. Absent and additional members.

AMENDMENTS

1968 - Pub. L. 90-632, § 2(8). Oct. 24, 1968, 82 Stat. 1336, substituted "Military judge of a general or special court-martial" for "Law officer of a general court-martial" in item 826 (article 26).

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by -

- (1) the President of the United States;
- (2) the Secretary of Defense;
- (3) the commanding officer of a unified or specified combatant command;
- (4) the Secretary concerned;
- (5) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine corps;
- (6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
- (7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Oct. 1, 1986, Pub. L. 99-433, title II, § 211(b), 100 Stat. 1017.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
822(a).....	50:586(a).	May 5, 1950, ch. 169, § 1
822(b).....	50:586(b)	(Art. 22), 64 Stat. 115.

Subsection (a)(2) is substituted for the words "the Secretary of a Department".

In subsection (a)(4), the words "continental limits of the" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words "any other commanding officer" are substituted for the words "such other commanding officers as may be".

In subsection (b), the word "If" is substituted for the word "When". The words "if considered" are substituted for the words "when deemed".

AMENDMENTS

1986 - Subsec. (a)(2) to (9). Pub. L. 99-433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (1), respectively.

CROSS REFERENCES

Complaints of wrongs, see section 938 of this title.

Courts of inquiry, authority to convene, see section 935 of this title.

Initial action on record, see section 860 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 164 of this title.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by -

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
823(a)	50:587(a).	May 5, 1950, ch. 169, § 1
823(b)	50:587(b).	(Art. 23), 64 Stat. 115.

In subsection (a)(7), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the word "If" is substituted for the word "When". The words "if considered" are substituted for the words "when deemed".

CROSS REFERENCES

Initial action on record, see section 860 of this title.

§ 824. Art. 21. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by -

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
824(a).....	50:588(a).	May 5, 1960, ch. 169, § 1
824(b).....	50:588(b).	(Art. 24), 64 Stat. 116.

In subsection (a)(4), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the words "only one commissioned" are substituted for the words "but one" for clarity. The word "considered" is substituted for the word "deemed".

CROSS REFERENCES

Initial action on record, see section 860 of this title.
Inquests, disposition of effects of deceased persons, see sections 4711, 4712, 9711, 9712 of this title.

§ 825. Art. 2.5. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Oct. 24, 1968, Pub. L. 90-632, § 2(7), 82 Stat. 1336; Dec. 6, 1983, Pub. L. 98-209, §§ 3(b), 13(c), 97 Stat. 1394, 1408; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 803(a), 100 Stat. 3906.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
825(a)	50:589(a).	May 5, 1950, ch. 169, § 1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word "commissioned" is inserted before the word "officer" for clarity. The word "is" is substituted for the words "shall be".

In subsections (a), (b), and (c)(1), the words "with the armed forces" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be". The words "a commissioned" are substituted for the word "an" for clarity.

In subsection (c), the words "member" and "members", respectively are substituted for the words "person" and "persons". The words "of an armed force" are inserted for clarity.

In subsection (c)(1), the word "is" is substituted for the words "shall be". The word "before" is substituted for the words "prior to". The words "the accused may not" are substituted for the words "no enlisted person shall", for clarity. The word "If" is substituted for the word "Where".

In subsection (c)(2), the word "means" is substituted for the words "shall mean". The words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "may" is substituted for the word "shall". The word "than", before the words "a body", is omitted as surplusage.

In subsection (d)(1), the word "may" is substituted for the word "shall". The word "member" is substituted for the word "person".

In subsection (d)(2), the word "is" is substituted for the words "shall be". The word "detail" is substituted for the word "appoint". since the filling of the position involved is not appointment to an office in the constitutional sense. The words "member of an armed force" and "members of the armed forces", respectively, are substituted for the words "person" and "persons".

AMENDMENTS

1986-Subsec. (c)(1). Pub. L. 99-661 substituted "has requested orally on the record or in writing" for "has requested in writing".

1983-Subsec. (c)(2). Pub. L. 98-209, § 13(c). struck out "the word" before "unit".

Subsec. (e). Pub. L. 98-209, § 3(b), added subsec. (e).

1968-Subsec. (c)(1). Pub. L. 90-632 inserted requirement that an accused's request for inclusion of enlisted members on his court-martial be made before conclusion of a pretrial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted "assembled" for "convened" to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(b) of title VIII of Pub. L. 99-661 provided that: "The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title."

Title VIII of Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive

order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 3(b) of Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness

for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Oct. 24, 1968, Pub. L. 90-632, 632, § 2(9), 82 Stat. 1336; Dec. 6, 1983, Pub. L. 98-209, § 3(c)(1), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
826(a).....	50:590(a)	May 5, 1950, ch. 169. § 1
826(b).....	50:590(b)	(Art. 26), 64 Stat. 117.

In subsection (a), the words "a commissioned" are substituted for the word "an" for clarity. The words "of the United States" are omitted as surplusage. The word "is" is substituted for the words "shall be". The word "if" is substituted for the word "when". The word "detail" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word "may" is substituted for the word "shall".

AMENDMENTS

1983 - Subsec. (a). Pub. L. 98-209, § 3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98-209, § 3(c)(1)(B), substituted "in accordance with regulations prescribed under subsection (a). Unless" for "by the convening authority, and, unless".

1968 - Pub. L. 90-632 substituted "military judge" for "law officer" and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90-632 substituted reference to military judge for references to law officer and such law officer's requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90-632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90-632 redesignated former subsec. (b) as (e) and substituted "military judge" for "law officer" and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) 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 on the first day of the tenth month following October 1968, see

section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO LAW OFFICER DEEMED
REFERENCES TO MILITARY JUDGE

Section 3(a) of Pub. L. 90-632 provided that: "Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge."

CROSS REFERENCES

Authentication of record, see section 854 of this title.

Definition of military judge, see section 801 of this title.

Oath to perform duties faithfully, see section 842 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

Rulings on interlocutory questions, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 801 of this title.

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge; or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial-

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial-

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel

having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Dec. 8, 1967, Pub. L. 90-179, § 1(5), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90-632, § 2(10), 82 Stat. 1337; Dec. 6, 1983, Pub. L. 98-209, §§ 2(d), 3(c)(2), 97 Stat. 1393, 1394.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
827(a).....	50:591(a).	May 5, 1950, ch. 169, § 1
827(b).....	50:591(b).	(Art. 27), 64 Stat. 117.
827(c).....	50:591(c)	

The words, "detail" and "detailed" are substituted for the words "appoint" and "appointed" throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word "and" is substituted for the words "together with". The word "considers" is substituted for the word "deems". The words "necessary or" are omitted as surplusage, since what is necessary is also appropriate. The word "may" is substituted for the word "shall". The word "later" is substituted for the word "subsequently".

In subsections (5) and (c), the word "must" is substituted for the word "shall", since the clauses prescribe conditions and not commands.

In subsection (b), the word "for" is substituted for the words "in the case of". The words "person *** a person who is" are omitted as surplusage.

AMENDMENTS

1983 - Subsec. (a)(1). Pub. L. 98-209, § 3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98-209, § 3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted "assistant or associate defense counsel" for "assistant defense counsel".

Subsec. (b)(1). Pub. L. 98-209, § 2(d)(1), substituted "judge advocate" for "judge advocate of the Army,

Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard."

Subsec. (c)(3). Pub. L. 98-209, § 2(d)(2), struck out ", or a law specialist," after "is a judge advocate".

1968-Subsec. (a). Pub. L. 90-632, § 2(10)(A), substituted "military judge" for "law officer".

Subsec. (c). Pub. L. 90-632, § 2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967-Subsec. (b)(1). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98-209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Appointment of appellate counsel, see section 870 of this title.

Article to be explained, see section 937 of this title.

Courts of inquiry, appointment of counsel for court, see section 935 of this title.

Duties of trial and defense counsel, see section 838 of this title.

Oath of trial and defense counsel to perform duties faithfully, see section 842 of this title.

Oaths, administration of: notary, general powers of, see section 936 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 819, 838, 870, 937, 5587a of this title.

§ 828. Art. 25. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
828	50:592.	May 5, 1950, ch. 169, § 1 (Art. 28), 64 Stat. 117.

The words "Secretary concerned" are substituted for the words "Secretary of the Department". The words, "detail or employ" are substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense.

CROSS REFERENCES

Judge Advocate Generals of Army, Navy, and Air Force to receive, revise and have recorded proceedings

of courts of inquiry and military commissions, see sections 3037, 5148, 8037 of this title.

Oath of reporters and interpreters to perform duties faithfully, see section 842 of this title.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816(1)(B) or (2)(C) of this title (article 16(1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Oct. 24, 1968, Pub. L. 90-632, § 2(11), 82 Stat. 1337; Dec. 6, 1983, Pub. L. 98-209, § 3(d), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
829(a)	50:593(a).	May 5, 1950, ch. 169, § 1 (Art 29), 64 Stat. 117.
829(b)	50:593(b).	
829(c)	50:593(c).	

In subsections (a), (b), and (c). the word "may" is substituted for the word "shall".

In subsections (b) and (c), the word "details" is substituted for the word "appoints", since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

1983-Subsec. (a). Pub. L. 98-209 substituted "unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause" for "except for physical disability or as a result of a challenge or by order of the convening authority for good cause".

1968-Subsec. (a). Pub. L. 90-632, § 2(11)(A), substituted "court has been assembled for the trial of the accused" for "accused has been arraigned".

Subsec. (b). Pub. L. 90-632, § 2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90-632, § 2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90-632, § 2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(l) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

SUBCHAPTER VI - PRE-TRIAL PROCEDURE

sec. Art.

- 830. 30. Charges and specifications.
831. 31. Compulsory self-incrimination prohibited.
832. 32. Investigation.
833. 33. Forwarding of charges.
834. 34. Advice of staff judge advocate and reference for trial.
835. 35. Service of charges.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state-

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows for 830(a), 830(b).

In subsection (a). the word "they" is substituted for the words "the same". The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Authority to administer oaths, see section 936 of this title.

Corrections and changes to conform to investigation report, see section 834 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 849 of this title.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows for 831(a), 831(b), 831(c), 831(d).

The word "may" is substituted for the word "shall" throughout the revised section.

CROSS REFERENCES

Article to be explained see section 937 of this title. Self-incrimination; protection against, see Const. Amend. 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Nov. 20, 1981, Pub. L. 97-81, § 4(a), 95 Stat. 1088.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
832(a).....	50:603(a).	May 5, 1950, ch. 169, § 1 (Art. 32), 64 Stat. 118.
832(b)	50:603(b).	
832(c).....	50:603(C)	
832(d).....	50:603(d).	

In subsection (a), the word "may" is substituted for the word "shall". The words "consideration of the" and "a recommendation as to" are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word "detailed" is substituted for the word "appointed", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word "before" is substituted for the words "prior to the time". The words "of this section" are omitted as surplusage.

In subsection (d), the word "are" is substituted for the words "shall be." The word "does" is substituted for the words "in any case shall".

AMENDMENTS

1981-Subsec. (b). Pub. L. 97-81 substituted "The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section" for "Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

CROSS REFERENCES

Oaths, administration of; notary, general powers of, see section 936 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 834, 838 of this title.

§ 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
833	50:604.	May 5, 1950, ch. 169, § 1 (Art. 33), 64 Stat. 119.

§ 831. Art. 31. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that-

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate-

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Dec. 6, 1983, Pub. L. 98-209, § 4, 97 Stat. 1395.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
834(a).....	50:605(a).	May 5, 1950, ch. 169, § 1
834(b).....	50:605(b).	(Art. 34), 64 Stat. 119.

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

AMENDMENTS

1983-Subsec. (a). Pub. L. 98-209, § 4(a), substituted "judge advocate" for "judge advocate or legal officer", and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense. for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98-209, § 4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and 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), (3) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 835. Art. 33. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Oct. 24, 1968, Pub. L. 90-632, § 2(12), 82 Stat. 1337.)

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
835.....	50:606.	May 5, 1950, ch. 169, § 1 (Art. 35), 64 Stat. 119.

The word "may" is substituted for the word "shall". The word "after" is substituted for the words "subsequent to".

AMENDMENTS

1968-Pub. L. 90-632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 839 of this title.

SUBCHAPTER VII - TRIAL PROCEDURE

Sec.	Art.	
836.	36.	President may prescribe rules.
837.	37.	Unlawfully influencing action of court.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
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846.	46.	opportunity to obtain witnesses and other evidence.
847.	47.	Refusal to appear or testify.
848.	48.	Contempts.
849.	49.	Depositions.
850.	50.	Admissibility of records of courts Of inquiry
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Number of votes required.
853.	53.	Court to announce action.
854.	54.	Record of trial.

AMENDMENTS

1986-Pub. L. 99-661, div. A, title VIII, § 802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a

§ 536. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable and shall be reported to Congress.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Nov. 9, 1979, Pub. L. 96-107, title VIII, § 801(b), 93 Stat. 811.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
836(a)	50:611(a).	May 5, 1950, ch. 169, § 1
836(b)	50:611(b).	(Art. 36), 64 Stat. 120.

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

In subsection (b), the word “under” is substituted for the words “in pursuance of”.

AMENDMENTS

1979-Subsec. (a). Pub. L. 96-107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tribunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

CROSS REFERENCES

Competency of accused as witness, see section 3481 of Title 18, Crimes and Criminal Procedure.

Federal Rules of Criminal Procedure, see Title 18, Appendix.

Judge Advocate General of Army, Navy, and Air Force to receive, revise, and have recorded proceedings of courts of inquiry and military commissions, see sections 3037, 5148, 8037 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 839, 906a of this title.

§ 837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in

determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, Pub. L. 90-632, § 2(13), 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
837.....	50:612.	May 5, 1950, ch. 169, § 1 (Art. 37), 64 Stat. 120.

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

AMENDMENTS

1968-Pub. L. 90-632 designated existing provisions as subsec. (a), substituted “military judge” for “law officer”, inserted provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from prohibitions of subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented-

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion-

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define "reasonably available" for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committees on Armed Services of the Senate and House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel-

(1) may forward the attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, Pub. L. 90-633, § 2(14), 82 Stat. 1338; Nov. 20, 1981, Pub. L. 97-81, § 4(b), 95 Stat. 1088;

Dec. 6, 1983, Pub. L. 98-209, § 3(e), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
838(a).....	50:613(a).	May 5, 1950, ch. 169, § (Art. 38), 64 Stat.
838(b).....	50:613(b).	
838(c).....	50:613(c).	
838(d).....	50:613(d).	
838(e).....	50:613(e).	

In subsection (b), the word "has" is substituted for the words "shall have". The word "under" is substituted for the words "pursuant to". The word "duly" is omitted as surplusage. The words "detailed" and "who were detailed" are substituted for the word "appointed", since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word "considers" is substituted for the words "may deem".

AMENDMENTS

1983-Subsec. (b)(6). Pub. L. 98-209, § 3(e)(1), substituted "the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel" for "a convening authority".

Subsec. (b)(7). Pub. L. 98-209, § 3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98-209, § 3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981-Subsec. (b). Pub. L. 97-81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the "reasonable availability" of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968-Subsec. (b). Pub. L. 90-632 substituted "military judge or by the president of a court-martial without a military judge" for "president of the court".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Courts of inquiry, representation by counsel, see section 935 of this title.

Vacation of suspension of sentence, representation of probationer at hearing, see section 872 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 832, 937 of this title.

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(15), 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
839	50:614.	May 5, 1950, ch. 169, § 1 (Art. 39), 64 Stat. 121.

The word "When" is substituted for the word "Whenever". The words "deliberates or votes" are substituted for the words "is to deliberate or vote". The word "may" is substituted for the word "shall". The word "shall" is inserted before the words "be in the presence" for clarity.

AMENDMENTS

1968—Pub. L. 90-632 added subsec. (a), designated existing provisions as subsec. (b), substituted "military judge" for "law officer", and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Consultations by military judge with members of court, see section 826 of this title.

Record of trial, see section 854 of this title.

Voting and rulings, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 825, 835 of this title.

§ 840. Art. 40. Continuances

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(16), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
840	50:615.	May 5, 1950, ch. 169, § 1 (Art. 40), 64 Stat. 121.

AMENDMENTS

1968—Pub. L. 90-632 inserted reference to military judge.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 841. Art. 41. Challenges

(a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(17), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
841(a)	50:616(a).	May 5, 1950, ch. 169, § 1 (Art. 41), 64 Stat. 121.
841(b)	50:616(b).	

In subsection (a), the word "may" is substituted for the word "shall" before the words "not receive".

In subsection (b), the word "the" is inserted before the word "trial". The word "is" is substituted for the

words "shall be". The word "may" is substituted for the word "shall".

AMENDMENTS

1968-Subsec. (a). Pub. L. 90-632, § 2(17)(A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90-632, § 2(17)(C), substituted "military judge" for "law officer".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.
Voting and rulings, see section 851 of this title.

§ 842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90-632, § 2(18), 82 Stat. 1339; Dec. 6, 1983, Pub. L. 98-209, §§ 2(e), 3(f), 97 Stat. 1393, 1395.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
842(a)	50:617(a).	May 5, 1950, ch. 169, § 1
842(b)	50:617(b).	(Art. 42), 64 Stat. 121.

In subsection (a), the word "all" and the word "the" before the words "members", "trial", "defense", and "reporter" are omitted as surplusage.

In subsections (a) and (b), the words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of Title 1.

In subsection (b), the words "Each witness" are substituted for the words "All witnesses".

AMENDMENTS

1983-Subsec. (a). Pub. L. 98-209 struck out "law specialist," after "judge advocate" in two places, substituted "assistant or associate defense counsel" for "assistant defense counsel".

1968-Subsec. (a). Pub. L. 90-632 struck out requirement that the oath given to court-martial personnel

be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(l) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

§ 843. Art. 43. Statute of limitations

(a) A person charged with absence without leave or missing movement in time of war, or with any offense punishable by death, may be tried and punished at any time without limitation.

(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter-

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations-

(A) has expired: or

(B) will expire within 180 days after the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must-

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 805(a), (b), 100 Stat. 3908.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
843(a)....	50:618(a).	May 5, 1950, ch. 169, § 1 (Art. 43), 64 Stat. 121.
843(b)....	50:618(b).	
843(c)....	50:618(c).	
843(d)....	50:618(d).	
843(e)....	50:618(e).	
843(f)....	50:618(f).	

In subsection (b), the word "inclusive" is omitted as surplusage.

In subsections (b) and (c), the words "is not" are substituted for the words "shall not be".

In subsection (e), the words "For an" are substituted for the words "In the case of any". The word "is" is substituted for the words "shall be". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (f), the word "is" is substituted for the words "shall be".

AMENDMENTS

1986-Subsecs. (a) to (c). Pub. L. 99-661, § 805(a), amended subsecs. (a) to (c) generally. Prior to amendment, subsecs. (a) to (c) read as follows:

"(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

"(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919-932 of

this title (articles 119-132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

"(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15)."

Subsec. (g). Pub. L. 99-661, § 805(b), added subsec. (g).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(c) of Pub. L. 99-661 provided that: "The amendments made by this section [amending this section] shall apply to an offense committed on or after the date of the enactment of this Act [Nov. 14, 1986]."

CROSS REFERENCES

Absence without leave, see section 886 of this title.

Aiding enemy, see section 904 of this title.

Desertion, see section 885 of this title.

Frauds against United States, see section 932 of this title.

Jurisdiction to try certain personnel, limitations, see section 803 of this title.

Murder, see section 918 of this title.

Mutiny, see section 894 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 803 of this title.

§ 841. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
844(a).....	50:619(a).	May 5, 1950, ch. 169 § 1 (Art. 44), 64 Stat. 122.
844(b).....	50:619(b).	
844(c).....	50:619(c).	

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

In subsection (b), the word "is" is substituted for the words "shall be held to be".

In subsection (c), the word "after" is substituted for the words "subsequent to". The word "before" is substituted for the words "prior to". The word "is" is substituted for the words "shall be".

CROSS REFERENCES

Double jeopardy, prohibition against, see Const. Amend. 5.

§ 845. Art. 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty imprudently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Oct. 24, 1968, Pub. L. 90-632, § 2(19), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
845(a)..... 845(b).....	50:620(a). 50:620(b).	May 5, 1950, ch. 169, § 1 (Art. 45), 64 Stat. 122.

In subsection (b), the word "may" is substituted for the word "shall".

AMENDMENTS

1968-Subsec. (a). Pub. L. 90-632, § 2(19)(A), substituted "after arraignment" for "arraigned before a court-martial".

Subsec. (b). Pub. L. 90-632, § 2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 852 of this title.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
846.....	50:621.	May 5, 1950, ch. 169, § 1 (Art. 46), 64 Stat. 122.

The word "Commonwealths" is inserted to reflect the present status of Puerto Rico.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

§ 847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who -

(1) has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the Territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than \$500, or imprisonment for not more than six months, or both.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
847(a)..... 847(b)..... 847(c)..... 847(d).....	506Ta) 50:622(b). 50:633(c). 50:622(d).	May 5, 1950, ch. 169, § 1 (Art. 47), 64 Stat. 123.

In subsection (a), the word "Any" is substituted for the word "Every". The word "is" is substituted for the words "shall be deemed".

In subsection (b), the words "named in subsection (a)" are substituted for the words "denounced by this article". The words "Territories, Commonwealths, or" are substituted for the word "Territorial". The words "not more than" are substituted for the words "a period not exceeding".

In subsection (c), the words "It shall be the duty of ***to" are omitted as surplusage. The words "United States Attorney" are substituted for the words "United States district attorney", to conform to the terminology of section 501 of title 28. The word "shall" is inserted after the word "jurisdiction".

CROSS REFERENCES

Per diem and mileage of witnesses generally, see section 1821 of Title 28, Judiciary and Judicial Procedure.

§ 848. Art. 48. Contempts

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
848.....	50:623.	May 5, 1950, ch. 169, § 1 (Art. 48), 64 Stat. 123.

The word "may" is substituted for the word "shall".

§ 849. Art. 49. Depositions

(a) At any time after charges have been signed as provided in section 830 of this title (article 301, any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears-

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission,

or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Oct. 24, 1968, Pub. L. 90-632, § 2(20), 82 Stat. 1340; Dec. 6, 1983, Pub. L. 98-209, § 6(b), 97 Stat. 1400.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
849(a).....	50:624(a).	May 5, 1950, ch. 169, § 1 (Art. 49), 64 Stat. 123.
849(b).....	50:624(b).	
849(c).....	50:624(c).	
849(d).....	50:624(d).	
849(e).....	50:624(e).	
849(f).....	50:624(f).	

In subsection (a), the word "commissioned" is inserted for clarity.

In subsection (d), the word "Commonwealth" is inserted to reflect the present status of Puerto Rico. The words "of Columbia" are inserted after the word "District" for clarity. The words "the distance of" are omitted as surplusage.

In subsections (e) and (f), the words "the requirements of" and the words "of this article" are omitted as surplusage. The word "presented" is substituted for the word "adduced" in subsection (e).

In subsection (f), the word "directs" is substituted for the words "shall have directed". The words "by law" are omitted as surplusage.

AMENDMENTS

1983-Subsecs. (d), (f). Pub. L. 98-209 inserted "or, in the case of audiotape, videotape, or similar material, may be played in evidence" after "read in evidence".

1968-Subsec. (a). Pub. L. 90-632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on the first day of the 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)(l), (4) of Pub. L. 98-299, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCE

Authority competent to convene court-martial, see sections 822 to 824 of this title.

Officers authorized to administer oaths, see section 936 of this title.

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
850(a).....	50:625(a).	May 5, 1950, ch. 169 § 1
850(b).....	50:625(b).	(Art. 50), 64 Stat. 124.
850(c).....	50:625(c).	

In subsections (a) and (b), the word "commissioned" is inserted for clarity.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

Judge Advocate Generals of Army, Navy, and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 5148, 8037 of this title.

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility

under this section and charge them to find the accused-

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused-

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if-

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99-661, div. A, title VIII, § 802(a)(l), Nov. 14, 1986, 100 Stat. 3905.)

EFFECTIVE DATE

Section 802(b) of Pub. L. 99-661 provided that: "Section 850a of title 10, United States Code, as added by subsection (a)(l), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986]."

§ 851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them-

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Oct. 24, 1968, Pub. L. 90-632, § 2(21), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
851(a).....	50:626(a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851(b).....	50:626(b).	
851(c).....	50:626(c).	

In subsection (a), the words "in each case" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be" in the second sentence. The word "constitutes" is substituted for the words "shall constitute". The word "However," is substituted for the word "but". The word "his" is substituted for the words "any such". The words "the ruling is" are substituted for the words "such ruling be". The words "voice vote" are substituted for the words "vote *** viva vote".

In subsection (c), the word "must" is substituted for the word "shall" in clause (2), since a condition is prescribed, not a command. The words "United States" are substituted for the word "Government".

AMENDMENTS

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).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Military judge prohibited from voting, see section 826 of this title.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, 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. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Oct. 24, 1968, Pub. L. 90-632, § 2(22), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
853(a).....	50:627(a).	May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125.
853(b).....	50:627(b).	
853(c).....	50:627(c).	

In subsections (a) and (b), the word "may" is substituted for the word "shall".

In subsection (b)(3), 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.

AMENDMENTS

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.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Objections to rulings, voice vote on, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 850a, 851 of this title.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

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

HISTORICAL AND REVISION NOTES

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

The word "A" is substituted for the word "Every".

§ 854. Art. 54 Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

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

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, Pub. L. 90-632, § 2(23), 82 Stat. 1340; Dec. 6, 1983, Pub. L. 98-209, § 6(c), 97 Stat. 1400.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
854(a)	50:629(a).	May 5, 1950, ch. 169 § 1
854(b)	50:629(b).	(Art. 54), 64 Stat. 125.
854(c)	50:629(c).	

In subsection (a), the word "If" is substituted for the words "In case". The words "any of those" are substituted for the word "such" in the last sentence.

In subsection (b), the words "and the" are substituted for the word "which" before the word "record". The words "the matter and shall be authenticated in the manner required by such regulations as" are substituted for the words "such matter and be authenticated in such manner as may be required by regulations which".

In subsection (c), the words "it is" are inserted before the word "authenticated".

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, § 6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98-209, § 6(c)(2), substituted "the record" for "the record shall contain the matter and".

Subsecs. (c), (d). Pub. L. 98-209, § 6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subset. (a). Pub. L. 90-632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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)(l), (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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

SUBCHAPTER VIII - SENTENCES

Sec. Art.

- 855. 55. Cruel and unusual punishments prohibited.
- 856. 56. Maximum limits.
- 857. 57. Effective date of sentences.
- 858. 58. Execution of confinement.
- 858a. 58a. Sentences: reduction in enlisted grade upon approval.

AMENDMENTS

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".

CROSS REFERENCES

Article to be explained, see section 937 of this title. Constitutional limitation, see Const. Amend. 8.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title,

§ 856. Art. 56. Maximum limits

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

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

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".

§ 557. Art. 57. Effective date of sentences

(a) 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)).

(b) 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.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, Pub. L. 90-632, § 2(24), 82 Stat. 1341; Dec. 6, 1983, Pub. L. 98-209, § 5(f), 97 Stat. 1400.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statute; 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".

AMENDMENTS

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).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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)(l), (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 on the first day of the tenth month following October 1968, see

section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Delivery of offenders to civil authorities, see section 814 of this title.

Enlisted members' deposits not subject to forfeiture by sentence of court-martial, see section 1035 of this title.

Enlisted members required to make up lost time, see section 972 of this title.

Punishment prohibited before trial, see section 813 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, Territory, 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.)

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
858(b).....	50:639(b).	(Art. 58), 64 Stat. 126.

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".

CROSS REFERENCES

Enlisted members required to make up lost time, see section 973 of this title.

Gratuity payment to persons released from confinement or discharged for fraudulent enlistment, see sections 956 and 1048 of this title.

Penitentiary imprisonment, consent, see section 4083 of Title 18, Crimes and Criminal Procedure.

Prisons and prisoners, see section 4001 et seq. of Title 18.

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

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a

court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, 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, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, 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(l), July 12, 1960, 74 Stat. 468.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 707 of this title.

SUBCHAPTER IX - POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

<i>Sec.</i>	<i>Art.</i>	
859.	59.	Error of law; lesser included offense.
860.	60.	Action by the convening authority.
861.	61.	Waiver or withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Review by a judge advocate.
865.	65.	Disposition of records.
866.	66.	Review by Court of Military Review.
867.	67.	Review by the Court of Military Appeals.
868.	68.	Branch offices.
869.	69.	Review in the office of the Judge Advocate General.
870.	70.	Appellate counsel.
871.	71.	Execution of sentence: suspension of sentence.
872.	72.	Vacation of suspension.
873.	73.	Petition for a new trial.
874.	74.	Remission and suspension.
875.	75.	Restoration.
876.	76.	Finality of proceedings, findings, and sentences.
876a.	76a.	Leave required to be taken pending review of certain court-martial convictions.

AMENDMENTS

1983-Pub. L. 98-209, §§ 5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400-1402, substituted "Post-trial Procedure and Review of Courts-Martial" for "Review of Courts-Martial" in subchapter heading, "Action by the convening authority" for "Initial action on the record" in item 860, "Waiver or withdrawal of appeal" for "Same-General court-martial records" in item 861, "Appeal by the United States" for "Reconsideration and revision" in item 862, "Review by a judge advocate" for "Approval by the convening authority" in item 864, and "Disposition of records" for "Disposition of records after review by the convening authority" in item 865.

1981-Pub. L. 97-81, § 2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 816a.

1968-Pub. L. 90-632, § 2(25), Oct. 24, 1968, 82 Stat. 1341, substituted "Court of Military Review" for "board of review" in item 866 (article 66).

§ 859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
859(a)	50:646(a).	May 5, 1950, ch. 169, § 1
859(b)	50:646(b).	(Art. 59), 64 Stat. 127.

The word "may" is substituted for the word "shall".

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may-

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused. n-ho may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision-

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the find-

ings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Dec. 6, 1983, Pub. L. 98-209, § 5(a)(1), 97 Stat. 1395; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 806(a)-(c), 100 Stat. 3908, 3909.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
860	50:647.	May 5, 1950, ch. 169, § 1 (Art. 60), 64 Stat. 127.

The word "a" is substituted for the word "every". The word "by" before the words "any officer" is omitted as surplusage. The word "person" is substituted for the word "officer" before the words "who convened", since, under sections 823 and 824 of this title (articles 23 and 24), noncommissioned officers who are "officers in charge" may convene special and summary courts-martial.

AMENDMENTS

1986-Subsec. (b)(1). Pub. L. 99-661, § 806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period-

"(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

"(B) in the case of all other courts-martial, for not more than an additional 10 days."

Subsec. (b)(2). Pub. L. 99-661, § 806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99-661, § 806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after "case", and struck out former par. (3) which read as follows: "In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days."

Subsec. (c)(2). Pub. L. 99-661, § 806(b), struck out "and, if applicable, under subsection (d)," after "under subsection (b)".

Subsec. (d). Pub. L. 99-661, § 806(c), substituted "who may submit any matter in response under subsection (b)" for "who shall have five days from the

date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days."

1983-Pub. L. 98-209 amended section generally, substituting "Action by the convening authority" for "Initial action on the record" as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 806(c) [(d)] of title VIII of Pub. L. 99-661 provided that: "The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title."

Title VIII of Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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.

CROSS REFERENCES

Authority to convene general, special or summary courts-martial, see sections 822 to 824 of this title.
Record of trial, see section 854 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 838, 857, 861, 864, 869, 871, 817a of this title; title 37 section 406.

§ 861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98-209, § 5(b)(1), 97 Stat. 1397.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
861	50:648.	May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127.

The word “each” is substituted for the word “every”.

AMENDMENTS

1983-Pub. L. 98-209 amended section generally, substituting “Waiver or withdrawal of appeal” for “Same-General court-martial records” as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865, 866, 869, 871 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Military Review and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Military Review may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in

deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98-209, § 5(c)(1), 97 Stat. 1398.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
862(a)	50:649(a).	May 5, 1950, ch. 169, § 1 (Art. 62), 64 Stat. 127.
862(b)	50:649(b).	

AMENDMENTS

1983-Pub. L. 98-209 amended section generally, substituting “Appeal by the United States” for “Reconsideration and revision” in section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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.

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98-209, § 5(d), 97 Stat. 1398.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
863(a)	50:650(a).	May 5, 1950, ch. 169, § 1 (Art. 63), 64 Stat. 127.
863(b)	50:650(b).	

In subsection (a), the words “In such a” are substituted for the words “in which”.

In subsection (b), the word "Each" is substituted for the word "Every". The word "may" is substituted for the word "shall" in the second sentence.

AMENDMENTS

1983-Pub. L. 98-209 struck out subsec. (a), which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he disapproved the findings without reordering a rehearing he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted "under this chapter" after "Each rehearing", and inserted provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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.

§ 864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

- (1) Conclusions as to whether-
 - (A) the court had jurisdiction over the accused and the offense;
 - (B) the charge and specification stated an offense; and
 - (C) the sentence was within the limits prescribed as a matter of law.
- (2) A response to each allegation of error made in writing by the accused.
- (3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if-

- (1) the judge advocate who reviewed the case recommends corrective action;
- (2) the sentence approved under section 860(c) of this title (article 60(c)) extends to

dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may-

- (A) disapprove or approve the findings or sentence, in whole or in part;
- (B) remit, commute, or suspend the sentence in whole or in part;
- (C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or
- (D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98-209, § 7(a)(1), 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source U.S. Code)</i>	<i>Source (Statutes at Large)</i>
864.....	50:651	May 5, 1950, ch. 169, § 1 (Art. 64), 64 Stat. 128.

The word "may" is substituted for the word "shall". The word "is" is substituted for the words "shall constitute".

AMENDMENTS

1983-Pub. L. 98-209 amended section generally, substituting "Review by a judge advocate" for "Approval by the convening authority" in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discretion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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.

CROSS REFERENCES

Disapproval by the convening authority. see section 863 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 871 of this title.

§ 865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 611, the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Dec. 8, 1967, Pub. L. 90-179, § 1(6), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90-632, § 2(26), 82 Stat. 1341; Dec. 12, 1980, Pub. L. 96-513, title V, § 511(25), 94 Stat. 2922; Dec. 6, 1983, Pub. L. 98-209, § 6(d)(1), 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
865(a)	50:652(a).	May 5, 1950, ch. 169, § 1 (Art. 65), 64 Stat. 128.
865(b)	50:652(b).	
865(c)	50:652(c).	

In subsection (b), the word "If" is substituted for the word "Where".

In subsections (a) and (b), the words "send" and "sent" are substituted for the words "forward" and "forwarded", respectively.

In subsection (c), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

AMENDMENTS

1983-Pub. L. 98-209 amended section generally, substituting "Disposition of records" for "Disposition of records after review by the convening authority" in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

1980-Subsec. (c). Pub. L. 96-513 substituted "Department of Transportation" for "Department of the Treasury".

1968-Subsec. (b). Pub. L. 90-632 substituted "Court of Military Review" for "board of review" wherever appearing.

1967-Subsec. (c). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 866. Art. 66. Review by Court of Military Review

(a) Each Judge Advocate General shall establish a Court of Military Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Military Review may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Military Review established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Military Review the record in each case of trial by court-martial-

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

(c) In a case referred to it, the Court of Military Review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Military Review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Military Appeals, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Military Review. If the Court of Military Review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Military Review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Military Review.

(g) No member of a Court of Military Review shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Military Review, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(h) No member of a Court of Military Review shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Oct. 24, 1968, Pub. L. 90-632, § 2(27), 82 Stat. 1341; Dec. 6, 1983, Pub. L. 98-209, §§ 7(b), (c), 10(c)(1), 97 Stat. 1402, 1406.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
866(a)	50:653(a).	May 5, 1950, ch. 169, § 1 (Art. 66), 64 Stat. 128.
866(b)	50:633(b).	
866(c)	50:653(c).	
866(d)	50:653(d).	
866(e)	50:653(e).	
856(f)	50:653(f).	

In subsection (a), the word "Each" is substituted for the words "The * * * of each of the armed forces". The word "must" is substituted for the word "shall" after the word "whom", since a condition is prescribed, not a command. The words "of the United States" are omitted as surplusage.

In subsections (a) and (b), the word "commissioned" is inserted before the word "officer".

In subsection (c), the word "may" is substituted for the word "shall" and for the words "shall have authority to".

In subsection (e), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (f), the words "of the armed forces" and "proceedings in and before" are omitted as surplusage.

AMENDMENTS

1983-Subsec. (a). Pub. L. 98-209, § 7(b), inserted provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98-209, § 7(c), amended subsec. (b) generally, designating existing provisions as par. (1), struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98-209, § 10(c)(l), substituted "the Court of Military Appeals, or the Supreme Court" for "or the Court of Military Appeals".

1968-Subsec. (a). Pub. L. 90-632, § 2(27)(A), (B), substituted "Court of Military Review" for "board of review" in section catchline and, in subsec. (a), substituted "Court of Military Review" for "board of review" as name of reviewing body established by each Judge Advocate General, and inserted provisions setting out procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b) to (e). Pub. L. 90-632, § 2(27)(C), substituted "Court of Military Review" for "board of review" wherever appearing.

Subsec. (f). Pub. L. 90-632, § 2(27)(D), substituted "Courts of Military Review" for "boards of review" in two places.

Subsecs. (g), (h). Pub. L. 90-632, § 2(27)(E), added subsecs. (g) and (h).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98-209 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)(l), (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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Section 3(b) of Pub. L. 90-632 provided that: "Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review."

CROSS REFERENCES

Review in the office of the Judge Advocate General, see section 869 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 861, 862, 861, 865, 869 of this title.

§ 867. Art. 67. Review by the Court of Military Appeals

(a)(1) There is a United States Court of Military Appeals established under article I of the Constitution of the United States and located for administrative purposes only in the Department of Defense. The court consists of three judges appointed from civil life by the President, by and with the advice and consent of the Senate, for a term of fifteen years. Not more than two of the judges of the court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or the highest court of a State. Each judge is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Court of Appeals, and is eligible for reappointment. The President shall designate from time to time one of the judges to act as chief judge. The chief judge of the court shall have precedence and preside at any session which he attends. The other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The court may prescribe its own rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court.

(2) Judges of the United States Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, or for mental or physical disability, but for no other cause.

(3) If a judge of the United States Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals for the District of Columbia Circuit to fill the office for the period of disability.

(4) Any judge of the United States Court of Military Appeals who is receiving retired pay or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5 may become a senior judge, may occupy offices in a Federal building, may be provided with a staff assistant whose compensation shall not exceed the rate prescribed for GS-9 in the General Schedule under section 5332 of title 5, and, with his consent, may be called upon by the chief judge of said court to perform judicial duties with said court for any period or periods specified by such chief judge. A senior judge who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5) and allowances for travel and other expenses as a judge.

(b) The Court of Military Appeals shall review the record in-

(1) all cases in which the sentence, as affirmed by a Court of Military Review, extends to death;

(2) all cases reviewed by a Court of Military Review which the Judge Advocate General

orders sent to the Court of Military Appeals for review; and

(3) all cases reviewed by a Court of Military Review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review.

(c) The accused may petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of-

(1) the date on which the accused is notified of the decision of the Court of Military Review; or

(2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Military Appeals shall act upon such a petition promptly in accordance with the rules of the court.

(d) In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Military Review. In a case which the Judge Advocate General orders sent to the Court of Military Appeals, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law.

(e) If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(f) After it has acted on a case, the Court of Military Appeals may direct the Judge Advocate General to return the record to the Court of Military Review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g)(1) A committee consisting of the judges of the Court of Military Appeals, the Judge Advocate General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Staff Judge Advocate to the Commandant of the Marine Corps. and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of

the operation of this chapter. After each such survey, the committee shall report to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation, the number and status of pending cases and any recommendations relating to uniformity of policies as to sentences, amendments to this chapter, and any other matters considered appropriate.

(2) Each member of the committee appointed by the Secretary of Defense shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(3) The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(h) (l) Decisions of the Court of Military Appeals are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under such section any action of the Court of Military Appeals in refusing to grant a petition for review.

(2) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(i)(l) A judge of the United States Court of Military Appeals who is separated from civilian service in the Federal Government after completing the term of service for which he was appointed as a judge of the court is eligible for an annuity under this subsection. An individual who is a former judge of the court who is separated from civilian service in the Federal Government and who completed the term of service on the court for which he was appointed is eligible for an annuity under this subsection. A judge or former judge who is eligible for an annuity under this subsection shall be paid that annuity if he elects, at the time he becomes eligible to receive that annuity, to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(2) The annuity of a judge or former judge under this subsection is 80 percent of the rate of pay for a judge in active service on the United States Court of Military Appeals as of the date on which the judge or former judge is separated from civilian service.

(3) Nothing in this subsection affects any right of a judge or former judge to participate in the thrift savings plan under subchapter III of chapter 84 of title 5.

(4) The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of judges and former judges who receive an annuity under this subsection. That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under retire-

ment systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the judge or former judge as a condition for the annuity. An election by a judge or former judge to receive an annuity under this subsection terminates any right or interest which any individual may have to an annuity under any other retirement system for civilian employees of the Federal Government based on the service of the judge or former judge.

(5) The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this subsection in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this subsection. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(6) A retired judge or former judge of the court who is receiving an annuity under this subsection and who is appointed to a position in the Federal Government shall, during the period of such retired judge's or former judge's service in such position, be entitled to receive only the annuity under this subsection or the pay for that position, whichever is paid at the higher rate.

(7) A retired judge or former judge who is entitled to an annuity under this subsection and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this subsection, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by the judge or former judge at the time of such retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(8) Annuities and survivor annuities paid under this subsection shall be paid out of the Department of Defense Military Retirement Fund.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Aug. 14, 1964, Pub. L. 88-426, title IV, § 403(j), 78 Stat. 434; June 15, 1968, Pub. L. 90-340, § 1, 82 Stat. 178; Oct. 24, 1968, Pub. L. 90-632, § 2(28), 82 Stat. 1342; Dec. 23, 1980, Pub. L. 96-579, § 12(a), 94 Stat. 3369; Nov. 20, 1981, Pub. L. 97-81, § 5, 95 Stat. 1088; Oct. 12, 1982, Pub. L. 97-295, § 1(12), 96 Stat. 1289; Dec. 6, 1983, Pub. L. 98-209, § 7(d), 9(a), 10(c)(2), 13(d), 97 Stat. 1402, 1404, 1406, 1408; Apr. 21, 1987, Pub. L. 100-26, § 7(a)(2), 101 Stat. 275; Sept. 29, 1988, Pub. L. 100-456, div. A, title VII, § 722(a), (c), 102 Stat. 2002, 2003.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
867(a).....	50:654(a).	May 5, 1950, ch. 169, § 1 (Art. 67), 64 Stat. 129; Mar. 2, 1955, ch. 9; § 1(i), 69 Stat. 10.
867(b).....	50:654(b).	
867(c).....	50:654(c).	
867(d).....	50:654(d).	
867(e).....	50:654(e).	
867(f).....	50:654(f).	
867(g).....	50:654(g).	

In subsection (a)(1), the word "is" is substituted for the words "is hereby established". The words "all" and "which shall be" are omitted as surplusage. The word "consists" is substituted for the words "shall consist". The word "civil" is substituted for the word "civilian". The word "may" is substituted for the word "shall" before the words "be appointed". The word "is" is substituted for the word "shall" before the words "any person". The words "is entitled to" are substituted for the words "shall receive". The word "is" is substituted for the words "shall be" in the fourth sentence. The word "may" is substituted for the words "shall have power to * * * to". The word "does" is substituted for the word "shall" in the next to the last sentence. In the last sentence, the words "is entitled * * * are substituted for the word "shall". The word "outside" is substituted for the words "at a place other than his official station. The official station of such judges for such purpose shall be". The words "also" and "actually" are omitted as surplusage.

In subsection (a)(2), the words "February 28, 1951," are substituted for the words "the effective date of this subdivision". The word "shall" in the first sentence, and the word "shall" before the word "expire" in the second sentence, are omitted as surplusage. The word "before" is substituted for the words "prior to". The word "may" is substituted for the word "shall" before the words "be appointed".

In subsection (a)(3), the word "for" is substituted for the words "upon the ground of".

In subsection (b), the words "the following cases" are omitted as surplusage.

In subsections (b) and (d), the word "sent" is substituted for the word "forwarded".

In subsection (c), the word "when" is inserted after the word "time". The words "a grant of" are omitted as surplusage.

In subsection (d), the word "may" is substituted for the word "shall" in the first sentence.

In subsection (f), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (g), the words "of the armed forces" are omitted as surplusage. The words "policies as to sentences" are substituted for the words "sentence policies". The word "considered" is substituted for the word "deemed". The words "Secretaries of the military departments, and the Secretary of the Treasury" are substituted for the words "Secretaries of the Departments".

1982 ACT

In subsection (d), the words "Court of Military Review" are substituted for "board of review" because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90-632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

REFERENCES IN TEXT

The Federal Advisory Committee Act (5 U.S.C. App. D), referred to in subsec. (g)(3), is Pub. L. 92-463. Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1988-Subsec. (a)(4). Pub. L. 100-456, § 722(c), inserted "or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5" after "retired pay" in two places.

Subsec. (i). Pub. L. 100-456, § 722(a), added subsec. (i).

1987-Subsec. (g)(l). Pub. L. 100-26 substituted "the Staff Judge Advocate to the Commandant of the Marine Corps" for "the Director, Judge Advocate Division, Headquarters, United States Marine Corps".

1983-Subsec. (a)(3). Pub. L. 98-209, § 13(d), inserted "Circuit" after "District of Columbia".

Subsec. (b)(l). Pub. L. 98-209, § 7(d), struck out "affects a general or flag officer or" before "extends to death".

Subsec. (g). Pub. L. 98-209, § 9(a), designated existing provisions as par. (1). substituted "A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report" for "The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report", and added pars. (2) and (3).

Subsec. (h). Pub. L. 98-209, § 10(c)(2), added subsec. (h).

1982-Subsec. (d). Pub. L. 97-295, § 1(12)(A), substituted "Court of Military Review" for "board of review" after "incorrect in law by the".

Subsec. (g). Pub. L. 97-295, § 1(12)(B), substituted "Secretary of Transportation" for "Secretary of the Treasury" after "military departments, and the".

1981-Subsec. (c). Pub. L. 97-81 substituted provisions authorizing the accused to petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980-Subsec. (a)(l). Pub. L. 96-579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968-Subsec. (a)(1). Pub. L. 90-340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Article I of the United States Constitution. provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed

to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of \$33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed \$15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90-340 redesignated former par. (3) as (2) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90-340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90-340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90-632 substituted "Court of Military Review" for "board of review" wherever appearing.

1964-Subsec. (a)(1). Pub. L. 88-426 increased salary of judges from \$25,500 to \$33,000.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 722(d) of Pub. L. 100-456 provided that: "Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the United States Court of Military Appeals whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98-209 effective Dec. 6, 1983, and amended by sections 7(d) and 10(c)(2) of Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98-209 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 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review decision that is dated on or after that date, see section 7(a) and (b)(5) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88-426, see section 501 of Pub. L. 88-426.

DEADLINE FOR ESTABLISHMENT OF SURVIVOR PROGRAM

Section 722(b) of Pub. L. 100-456 provided that: "The Secretary of Defense shall establish the program required by paragraph (4) of section 867(i) of title 10, United States Code, as added by subsection (a), not later than one year after the date of the enactment of this Act [Sept. 29, 1988]."

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION: REPORT TO CONGRESSIONAL COMMITTEES

Section 9(b) of Pub. L. 98-209, as amended by Pub. L. 98-525, title XV, § 1521, Oct. 19, 1984, 98 Stat. 2628, provided that:

"(1) The Secretary of Defense shall establish a commission to study and make recommendations concerning the following matters:

"(A) Whether the sentencing authority in court-martial cases should be exercised by a military judge in all noncapital cases to which a military judge has been detailed.

"(B) Whether military judges and the Courts of Military Review should have the power to suspend sentences.

"(C) Whether the jurisdiction of the special court-martial should be expanded to permit adjudgment of sentences including confinement of up to one year, and what, if any, changes should be made to current appellate jurisdiction.

"(D) Whether military judges, including those presiding at special and general courts-martial and those sitting on the Courts of Military Review, should have tenure.

"(E) What should be the elements of a fair and equitable retirement system for the judges of the United States Court of Military Appeals.

"(2) The commission shall consist of nine members, at least three of whom shall be persons from private life who are recognized authorities in military justice or criminal law.

"(3) The commission shall prepare a comprehensive report in support of its recommendations on the matters set forth in paragraph (1). The commission shall include in such report its findings and comments on the following matters:

"(A) The experience in the civilian sector with jury sentencing and judge-alone sentencing, with particular reference to consistency, uniformity, sentence appropriateness, efficiency in the sentencing process, and impact on the rights of the accused.

"(B) The potential impact of mandatory judge-alone sentencing on the Armed Forces, with particular reference to consistency, uniformity, sentence appropriateness, efficiency in the sentencing process, impact on the rights of the accused, effect on the participation of members of the Armed Forces in the military justice system, impact on relationships between judge advocates and other members of the Armed Forces, and impact on the perception of the military justice system by members of the Armed Forces, the legal profession, and the general public.

"(C) The likelihood of a reduction in the number of general court-martial cases in the event the confinement jurisdiction of the special court-martial is expanded; the additional protections that should be afforded the accused if such jurisdiction is expanded; whether the minimum number of members prescribed by law for a special court-martial should be increased; and whether the appellate review process should be modified so that a greater number of cases receive review by the military appellate courts, in lieu of legal reviews presently conducted in the offices of the Judge Advocates General and elsewhere, especially if the commission determines that the special court-martial jurisdiction should be expanded.

"(D) The effectiveness of the present systems for maintaining the independence of military judges and what, if any, changes are needed in these systems to ensure maintenance of an independent military judiciary, including a term of tenure for such judges consistent with efficient management of military judicial resources.

"(4) The commission shall transmit its report to the Committees on Armed Services of the Senate and the House of Representatives and to the committee established under section 867(g) (article 67(g)) of title 10, United States Code, not later than December 15, 1984. Not later than the first day of the third calendar month that begins after receipt of such report, the committee established under section 867(g) (article 67(g)) of such title shall submit such comments on the report as it considers appropriate to the Committees on Armed Services of the Senate and the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

"(5) The Secretary of Defense shall ensure that the commission is provided with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

"(6) The Secretary shall ensure that the commission has reasonable access to information relevant to the study."

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Section 12(b) of Pub. L. 96-579 provided: "The term of office of a judge of the United States Court of Military Appeals serving on such court on the date of the enactment of this Act [Dec. 23, 1980] shall expire (1) on the date the term of such judge would have expired under the law in effect on the day before such date of enactment [Dec. 23, 1980], or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later."

REFERENCES TO BOARD OF REVIEW

Board of review deemed to mean Court of Military Review, see section 3(b) of Pub. L. 90-632, set out as a note under section 866 of this title.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Section 2 of Pub. L. 90-340 provided that: "The United States Court of Military Appeals established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act [June 15, 1968] shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act [June 15, 1968] shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act."

SALARY INCREASES

1987-Salaries of judges increased to \$95,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1977-Salaries of judges increased to \$57,500 per annum, upon recommendation of the President of the United States, see note set out under section 358 of Title 2.

1969-Salaries of judges increased from \$33,000 to \$42,500 per annum, commencing the first day of the pay period which begins after February 14, 1969, upon

recommendation of the President of the United States, see note set out under section 358 of Title 2.

EXECUTIVE ORDER No. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

UNITED STATES COURT OF MILITARY APPEALS; RULES OF PRACTICE AND PROCEDURE

See Appendix to this title.

CROSS REFERENCES

Execution of sentence, see section 871 of this title.

New trial, petition for, see section 873 of this title.

Review in office of Judge Advocate General, see section 869 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 869 of this title; title 5 section 8337; title 28 section 1259.

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Military Review with one or more panels. That Assistant Judge Advocate General and any Court of Military Review established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Military Review established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. IO, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, Pub. L. 90-632, § 2(29), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
868	50:655.	May 5, 1950, ch. 169, § 1 (Art. 68), 64 Stat. 130.

The word "considers" is substituted for the word "deems". The word "may" is substituted for the words "shall be empowered to". The word "respective" is inserted for clarity.

AMENDMENTS

1968-Pub. L. 90-632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted "Court of Military Review" for "board of review" as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Review by Court of Military Review, see section 866 of this title.

§ 869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if re-assessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both. If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, Pub. L. 90-632, § 2(30), 82 Stat. 1342; Nov. 20, 1981, Pub. L. 97-81, § 6, 95 Stat. 1089; Dec. 6, 1983, Pub. L. 98-209, § 7(e)(l), 97 Stat. 1402.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
869	50:656.	May 5, 1950, ch. 169, § 1 (Art. 69), 64 Stat. 130.

The word "may" is substituted for the word "will". The word "under" is substituted for the words "pursuant to the provisions of".

AMENDMENTS

1983-Pub. L. 98-309 amended section generally. Prior to amendment section provided that every

record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General: that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

1981--Pub. L. 97-81 inserted provision that, when a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time.

1968-Pub. L. 90-632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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)(l), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 effective at the end of the 60-day period beginning on Nov. 20, 1981, see section 7(a) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective Oct. 24, 1968, see section 4(b) of Pub. L. 90-632, set out as a note under section 801 of this title.

REFERENCES TO BOARD OF REVIEW

Board of review deemed to mean Court of Military Review, see section 3(b) of Pub. L. 90-632, set out as a note under section 866 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Section 7(e)(2) of Pub. L. 98-209 provided that: "The two-year period specified under the second sentence of section 869(b) (article 69(b)) of title 10, United States Code, as amended by paragraph (1), does not apply to any application filed in the office of the appropriate Judge Advocate General (as defined in section 801(l) of such title) on or before October 1, 1983. The application in such a case shall be considered in the same manner and with the same effect as if such two-year period had not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 864, 865 of this title.

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Military Review or the Court of Military Appeals when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Military Review, the Court of Military Appeals, or the Supreme Court-

- (1) when requested by the accused;
- (2) when the United States is represented by counsel; or
- (3) when the Judge Advocate General has sent the case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Review, the Court of Military Appeals, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, Pub. L. 90-632, § 2(31), 82 Stat. 1342; Dec. 6, 1983, Pub. L. 98-209, § 10(c)(3), 97 Stat. 1406.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
870(a).....	50:657(a).	
870(b).....	50:657(b).	
870(c).....	50:657(c).	May 5, 1950, ch. 169, § 1
870(d).....	50:657(d).	(Art. 70), 64 Stat. 130.
870(e).....	50:657(e).	

In subsection (a), the word "detail" is substituted for the word "appoint". since the filling of the position involved is not appointment to an office in the constitutional sense. The word "commissioned" is inserted for clarity. The word "are" is substituted for the words "shall be". The words "the provisions of" are omitted as surplusage.

In subsections (b) and (c), the word "shall" is substituted for the words "It shall be the duty of * * * to".

In subsection (c)(3), the word "sent" is substituted for the word "transmitted".

In subsection (d), the word "has" is substituted for the words "shall have".

In subsection (e), the word "directs" is substituted for the words "shall direct".

AMENDMENTS

1983-Subsec. (b). Pub. L. 98-209, § 10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98-209, § 10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968-Subsecs. (b) to (d). Pub. L. 90-632 substituted "Court of Military Review" for "board of review" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Trial counsel and defense counsel, duties, see section 838 of this title.

§ 871. Art. 71. Execution of sentence; suspension of sentence

(a) 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 he sees fit. That part of the sentence providing for death may not be suspended.

(b) 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 he 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.

(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there

is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review and-

(A) the time for the accused to file a petition for review by the Court of Military Appeals 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;

(B) such a petition is rejected by the Court of Military Appeals; or

(C) review is completed in accordance with the judgment of the Court of Military Appeals 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) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part thereof, except a death sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, Pub. L. 90-632, § 2(32), 82 Stat. 1342; Dec. 6, 1983, Pub. L. 98-209, § 5(e), 97 Stat. 1399.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
871(a).....	50:658(a).	May 5, 1950, ch. 169, § 1 (Art. 71), 64 Stat. 131.
871(b).....	50:658(b).	
871(c).....	50:658(c).	
871(d).....	50:658(d).	

In subsection (a). the word "may" is substituted for the word "shall".

In subsection (b), the word "commissioned" is inserted for clarity. The word "may" is substituted for the word "shall" in the first sentence. The words "Secretary concerned" are substituted for the words "Secretary of the Department". The words "who is" are omitted as surplusage.

In subsection (c). the word "may" is substituted for the word "shall".

AMENDMENTS

1983-Subsec. (a). Pub. L. 98-209, § 5(e)(1), amended subsec. (a) generally, substituting provision that part

of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98-209, § 5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman. the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a general or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98-209, § 5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: "No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals."

Subsec. (d). Pub. L. 98-209, § 5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: "All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence."

1968-Subsec. (c). Pub. L. 90-632, § 2(32)(A), substituted "Court of Military Review" for "board of review".

Subsec. (d). Pub. L. 90-632, § 2(32)(B), inserted reference to deferred court-martial Sentences.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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

Amendments by Pub. L. 90-632 effective on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Pay and allowances of enlisted members of Army and Air Force not to accrue during suspended sentence of dishonorable discharge, see section 804 of Title 37, Pay and Allowances of the Uniformed Services.

Vacation of suspension, see section 872 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 872 of this title.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer

having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Sources (Statutes at Large)
872(a).....	50:659(a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872(b).....	50:659(b).	
872(c).....	50:659(c).	

In subsection (a), the word "Before" is substituted for the words "Prior to".

In subsection (b), the words "be effective l l l" are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word "is" is substituted for the words "shall l l l be" in the last sentence. The word "sent" is substituted for the word "forwarded". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

§ 873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Oct. 24, 1968, Pub. L. 90-632, § 2(33), 82 Stat. 1342.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873.....	50:660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words "the ground" are substituted for the word "grounds". The words "as the case may be" are substituted for the word "respectively", since the prescribed action is alternative, not distributive.

AMENDMENTS

1968--Pub. L. 90-632 extended time during which accused may petition Judge Advocate General for a new

trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90-632, set out as a note under section 801 of this title.

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

Review by-

Court of Military Appeals, see section 867 of this title.

Court of Military Review, see section 866 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
874(a).....	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b).....	50:661(b).	

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not im-

posed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
875(a)	50:662(a).	May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word "If" is substituted for the word "Where". The word "imposed" is substituted for the word "sustained". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "issue" is substituted for the word "issuance". The word "commissioned" is inserted for clarity. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position". The word "receive" is omitted as surplusage.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
876	50:663.	May 5, 1950, ch. 169, § 1 (Art. 76), 64 Stat. 132.

The word "under" is substituted for the words "pursuant to". The word "are" is substituted for the words "shall be". The words "Secretary concerned" are substituted for the words "Secretary of a Department".

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97-81, § 2(c)(l), Nov. 20, 1981, 95 Stat. 1087, and amended Pub. L. 98-209, § 5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983-Pub. L. 98-209 substituted "under section 860 of this title (article 60)" for "under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction" and "by the officer exercising general court-martial jurisdiction", respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the 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)(l), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at the end of the 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(l) of Pub. L. 97-81, set out as a note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 707 of this title.

SUBCHAPTER X - PUNITIVE ARTICLES

- Sec. Art.
- 877. 77. Principals.
- 878. 78. Accessory after the fact.
- 879. 79. Conviction of lesser included offense.
- 880. 80. Attempts.
- 881. 81. Conspiracy.
- 882. 82. Solicitation.
- 883. 83. Fraudulent enlistment, appointment, or separation.
- 884. 84. Unlawful enlistment, appointment, or separation.
- 885. 85. Desertion.
- 886. 86. Absence without leave.
- 887. 87. Missing movement.
- 888. 88. Contempt toward officials.
- 889. 89. Disrespect toward superior commissioned officer.
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- 891. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
- 892. 92. Failure to obey order or regulation.
- 893. 93. Cruelty and maltreatment.
- 894. 94. Mutiny or sedition.
- 895. 95. Resistance, breach of arrest, and escape.
- 896. 96. Releasing prisoner without proper authority.
- 897. 97. Unlawful detention.
- 898. 98. Noncompliance with procedural rules.
- 899. 99. Misbehavior before the enemy.
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- 901. 101. Improper use of countersign.
- 902. 102. Forcing a safeguard.
- 903. 103. Captured or abandoned property.
- 904. 104. Aiding the enemy.
- 905. 105. Misconduct as prisoner.
- 906. 106. Spies.
- 906a 106a Espionage.
- 907. 107. False official statements.
- 908. 108. Military property of United States-Loss, damage, destruction, or wrongful disposition.
- 909. 109. Property other than military property of United States-Waste, spoilage, or destruction.
- 910. 110. Improper hazarding of vessel.
- 911. 111. Drunken or reckless driving.
- 912. 112. Drunk on duty.
- 912a. 112a Wrongful use, possession, etc., of controlled substances.
- 913. 113. Misbehavior of sentinel.
- 914. 114. Dueling.
- 915. 115. Malingering.
- 916. 116. Riot or breach of peace.
- 917. 117. Provoking speeches or gestures.
- 918. 118. Murder.
- 919. 119. Manslaughter.
- 920. 120. Rape and carnal knowledge.
- 921. 121. Larceny and wrongful appropriation.
- 922. 122. Robbery.
- 923. 123. Forgery.
- 923a. 123a Making, drawing, or uttering check, draft, or order without sufficient funds.
- 924. 124. Maiming.
- 925. 125. Sodomy.
- 926. 126. Arson.
- 927. 127. Extortion.
- 928. 128. Assault.
- 929. 129. Burglary.
- 930. 130. Housebreaking.
- 931. 131. Perjury.
- 932. 132. Frauds against the United States.
- 933. 133. Conduct unbecoming an officer and a gentleman.
- 93-l. 134. General article.

AMENDMENTS

1985-Pub. L. 99-145, title V, § 534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.
 1983-Pub. L. 98-209, § 8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.
 1961-Pub. L. 87-385, § 1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

§ 877. Art. 77. Principals

Any person punishable under this chapter who -

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter,

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
877	50:67L.	May 5, 1950, ch. 169, § 1 (Art. 77), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Definition of principal, federal offense, see section 2 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
878	50:672.	May 5, 1950, ch. 169, § 1 (Art. 78), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937, of this title.
 Definition of accessory after the fact, federal offense, see section 3 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
879	50:673.	May 5, 1950, ch. 169, § 1 (Art. 79), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 880. Art 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
880(a)	50:674(a).	May 5, 1950, ch. 169, § 1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words "even though" are substituted for the word "but" for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Desertion, attempt, see section 885 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 881. Art. 81. Conspiracy

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct,

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
881	50:675.	May 5, 1950, ch. 169, § 1 (Art. 81), 64 Stat. 134.

The words "or persons" are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Federal offenses, see sections 371, 372 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
882(a)	50:676(a)	May 5, 1950, ch. 169, § 1, (Art. 82), 64 Stat. 134.
882(b)	50:676(b)	

CROSS REFERENCES

Article to be explained, see section 937 of this title. Enticing desertion. federal offense, see section 1381 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who-

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder: or

(2) procures his own separation from the armed forces by knowingly false representa-

tion or deliberate concealment as to his eligibility for that separation;
shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
883	50:677.	May 5, 1950, ch. 169, § 1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words "means of" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION Noms

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
884	50:678.	May 5, 1950, ch. 169, § 1 (Art. 84), 64 Stat. 135.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who-
(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States:

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the of-

fense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NoTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
885(a)..... 885(b)..... 885(c).....	50:679(a). 50:679(b). 50:679(c).	May 5, 1950, ch. 169, § 1 (Art. 85), 64 Stat. 135.

In subsection (a), the word "unit" is substituted for the words "place of service" to conform to clause (2) of this section and section 886(3) of this title. The word "proper" is omitted as surplusage.

In subsection (b), the word "commissioned" is inserted for clarity. The word "before" is substituted for the words "prior to". The words "its acceptance*" are substituted for the words "the acceptance of the same". The words "after tender of" are substituted for the words "having tendered" for clarity. The word "due" is omitted as surplusage.

In subsection (c), the words "attempt to desert" are substituted for the words "attempted desertion".

CROSS REFERENCES

Apprehension of deserters, see section 808 of this title.

Article to be explained, see section 937 of this title.
Enlisted members of Army and Air Force, required to make up lost time, see section 972 of this title.

Enticing desertion and harboring deserters, federal offense, see section 1381 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Naturalization, deserter ineligible for, see section 1425 of Title 8, Aliens and Nationality.

Plea of guilty, prohibition against reception, see section 845 of this title.

Public office, deserter ineligible to hold, see section 1425 of Title 8, Aliens and Nationality.

Solicitation of offense, see section 882 of this title.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 883, 937 of this title.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority-

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
886.	50:680.	May 5, 1950, ch. 169, § 1 (Art. 86), 64 Stat. 135.

The words "groper" and "other" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Enlisted members required to make up time lost, see section 972 of this title.

Policy as to leave and liberty, Navy and Marine Corps, see section 5949 of this title.

Statute of limitations, see section 343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a courtmartial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
887	50:681.	May 5, 1950, ch. 169, § 1 (Art. 87), 64 Stat. 135.

CROSS REFERENCES

Article to be explained. see section 937 of this title.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Dec. 12, 1980, Pub. L. 96-513, title V, § 511(25), 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
888	50:682.	May 5, 1950, ch. 169, § 1 (Art. 88), 64 Stat. 135.

The word "commissioned" is inserted for clarity. The words "the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession" are substituted for the words "Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States".

AMENDMENTS

1980-Pub. L. 96-513 substituted "Secretary of Transportation" for "Secretary of the Treasury".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
889	50:683.	May 5, 1950, ch. 169, § 1 (Art. 89), 64 Stat. 135.

The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who-

- (1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or
- (2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
890	50:684.	May 5, 1950, ch. 169, § 1 (Art. 90), 64 Stat. 135.

The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Assault as Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.

Plea of guilty, prohibition against reception, see section 845 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who -

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
891	50:685.	May 5, 1950, ch. 169, § 1 (Art. 91), 64 Stat. 136.

The word "member" is substituted for the word "person".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who-

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
892	50:686.	May 5, 1950, ch. 169, § 1 (Art. 92), 64 Stat. 136.

The word "order" is substituted for the word "same".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
893	50:687.	May 5, 1950, ch. 169, § 1 (Art. 93), 64 Stat. 136.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Prisoner, misconduct as, see section 905 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who-

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
894(a).....	50:688(a)	May 5, 1950, ch. 169, § 1 (Art. 94), 64 Stat. 136.
894(b).....	50:688(b)	

In subsection (a)(1) and (2), the words "or persons" are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word "a" is substituted for the words "an offense of". The words "commissioned officer" are inserted after the word "superior". for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Federal offenses-

Advocating overthrow of Government, see section 2385 of Title 18, Crimes and Criminal Procedure. Mutiny affecting armed forces generally and during war, see sections 2387 and 2388 of Title 18.

Mutiny of seamen, see sections 2192, 2193 of Title 18.

Seditious conspiracy, see section 2384 of Title 18.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 of this title.

Solicitation of offense, see section 882 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title; title 38 section 3505.

§ 895. Art. 95. Resistance, breach of arrest, and escape

Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
895.....	50:689.	May 5, 1950, ch. 169, § 1 (Art. 95), 64 stat. 136.

CROSS REFERENCES

Apprehension, see sections 807 and 808 of this title. Article to be explained, see section 937 of this title.

Escape and rescue, federal offenses, see section 751 et seq. of Title 18. Crimes and Criminal Procedure.

Restraint-

Imposition, see section 809 of this title.

Persons charged with offenses, see section 810 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
896.....	50:690.	May 5, 1950, ch. 169, § 1 (Art. 96), 64 Stat. 136.

The words "whether or not the prisoner was committed in strict compliance with law" are substituted for the word "duly", to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951. par. 175a.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 897. Art. 93. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests,

or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
897.....	50:691.	May 5, 1950, ch. 169, § 1 (Art. 97), 64 Stat. 137.

CROSS REFERENCES

Apprehension, see sections 807 and 808 of this title. Article to be explained, see section 937 of this title.

Restraint-

Imposition, see section 809 of this title.

Persons charged with offenses, see section 810 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 898. Art. 98. Noncompliance with procedural rules

Any person subject to this chapter who-

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter, or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
898.....	50:692.	May 5, 1950, ch. 169, § 1 (Art. 98), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy-

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pilage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or

any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
 (9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
899	50:693.	May 5, 1950, ch. 169, § 1 (Art. 99), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Plea of guilty, prohibition against reception, see section 845 of this title.

Solicitation of offense, see section 882 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
900.....	50:694.	May 5, 1950, ch. 169, § 1 (Art. 100), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
901	50:695.	May 5, 1950, ch. 169, § 1 (Art. 101), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
902	50:696.	May 5, 1950, ch. 169, § 1 (Art. 102), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—
 (1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
903(a)	50:697(a).	May 5, 1950, ch. 169, § 1 (Art. 103), 64 Stat. 138.
903(b)	50:697(b).	

In subsection (b)(1), the words "of this section" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 904. Art. 104. Aiding the enemy

Any person who-

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

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

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
904	50:698.	May 5, 1950, ch. 169, § 1 (Art. 104), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses-

Enlistment to serve against United States, see section 2390 of Title 18, Crimes and Criminal Procedure.

Recruiting for service against United States, see section 2389 of Title 18.

Trading with the Enemy Act, see section 16 of Appendix to Title 50, War and National Defense.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title: title 5 section 8312: title 38 section 3505.

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war-

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
905	50:699.	May 5, 1950, ch. 169, § 1 (Art. 105), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Cruelty and maltreatment, see section 893 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
906	50:700.	May 5, 1950, ch. 169, § 1 (Art. 106), 64 Stat. 138.

The words "of the United States" are omitted as surplusage.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561. July 2, 1942, 7 F.R. 5101. 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war:

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the

Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

CROSS REFERENCES

Aliens likely to engage in espionage, exclusion, apprehension and deportation, see sections 1182, 1225, 1251 and 1327 of Title 8, Aliens and Nationality.

Article to be explained, see section 937 of this title. Communist-action organization, members of, see section 843 of Title 50, War and National Defense.

Espionage and censorship, see section 792 et seq. of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 3505.

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft- or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is-

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless-

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on-

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99-145, title V, § 534(a), Nov. 8, 1985, 99 Stat. 634.)

§ 907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
907	50:701.	May 5, 1950, ch. 169, § 1 (Art. 107), 64 Stat. 138.

The word "it" is substituted for the words "the same".

CROSS REFERENCES

Article to be explained, see section 937 of this title. Fraud and false statements, federal offenses, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 908. Art. 108. Military property of United States-Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority-

(1) sells or otherwise disposes of:

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
908.....	50:702.	May 5, 1950, ch. 169, § 1 (Art. 108), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Federal offenses-

Government property, malicious mischief, see section 1361 of Title 18, Crimes and Criminal Procedure.

Public money, property or records, embezzlement and theft, see section 641 of Title 18.

Purchase of veterans' or armed forces' facilities property, fraud and false statements, see section 1024 of Title 18.

Individual equipment, unauthorized disposition, see sections 4836, 9836 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 909. Art. 109. Property other than military property of United States-Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
909.....	50:703.	May 5, 1950, ch. 169, § 1 (Art. 109), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
910(a)..... 910(b).....	50:704(a). 50:704(b).	May 5, 1950, ch. 169, § 1 (Art. 110), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 911. Art. 111. Drunken or reckless driving

Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Oct. 27, 1986, Pub. L. 99-570, title III, § 3055, 100 Stat. 3207-76.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
911.....	50:705.	May 5, 1950, ch. 169, § 1 (Art. 111), 64 stat. 139.

AMENDMENTS

1986-Pub. L. 99-570 inserted "or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
912.....	50:706.	May 5, 1950, ch. 169, § 1 (Art. 112), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Drunkenness or neglect of duty by seamen on commercial vessel, federal offense, see section 2196 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98-209, § 8(a), Dec. 6, 1983, 97 stat. 1403.)

EFFECTIVE DATE

Section effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98-209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100-180, div. A, title XII, § 1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

"(a) ESTABLISHMENT OF PROCEDURES.--The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance-

"(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

"(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

(b) TRANSPORTATION OF SPECIMENS.--The procedures prescribed under subsection (a)-

"(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

"(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

"(c) TESTS FOR USE OF LSD.--Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis

of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

"(d) RULE OF CONSTRUCTION.--Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

"(e) CONTROLLED SUBSTANCES COVERED.--For purposes of this section, a controlled substance-& a substance described in section 912a(b) of title 10, United States Code.

"(f) REPORT.--Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 911 of this title.

§ 913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
913	50:707.	May 5, 1950, ch. 169, § 1 (Art. 113), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.
 Plea of guilty, prohibition against reception, see section 845 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
914	50:708.	May 5, 1950, ch. 169, § 1 (Art. 114), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service-

- (1) feigns illness, physical disablement, mental lapse or derangement; or
- (2) intentionally inflicts self -in jury:

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statute at Large)
915	50:709.	May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139.

CROSS REFERENCE

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
916.....	50:710.	May 5, 1950, ch. 169, § 1 (Art. 116), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Crew rioting on board vessel of United States, federal offense, see section 2192 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
917.....	50:711.	May 5, 1950, ch. 169 § 1 (Art. 117), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he-

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life: or
- (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
918	50:712.	May 5, 1950, ch. 169, § 1 (Art. 118), 64 Stat. 140.

The words "of this section" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 1111 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offense described under this section, see section 8312 of Title 5, Government Organization and Employees.

Killing while engaged in other crime as manslaughter, see section 919 of this title.

Plea of guilty, prohibition against reception, see section 845 of this title.

Statute of limitations. see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 919, 929, 937 of this title.

§ 919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being-

- (1) by culpable negligence: or
- (2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person:

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
919(a)	50:713(a).	May 5, 1950, ch. 169, § 1 (Art. 119), 64 Stat. 140.
919(b)	50:713(b).	

The word "named" is substituted for the word "specified".

CROSS REFERENCES

Article to be explained, see section 937 of this title. Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 1112 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 920. Art. 120. Rape and carnal knowledge

(a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
920(a)	50:714(a)	May 5, 1950, ch. 169, § 1 (Art. 120), 64 Stat. 140.
920(b)	50:714(b)	
920(c)	50:714(c).	

In subsection (c), the words "either of" are inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title. Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Plea of guilty, prohibition against reception, see section 845 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind-

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
921(a)	50:715(a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921(b)	50:715(b).	

In subsection (a), the words "whatever" and "true" are omitted as surplusage. The word "it" is substituted for the words "the same" in clauses (1) and (2).

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Embezzlement and theft, federal offenses, see section 641 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
922.....	50:716	May 5, 1950, ch. 169, § 1 (Art. 122), 64 Stat. 140.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Robbery and burglary, federal offenses, see section 2111 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud-

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL ANTI REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
923	50:717.	May 5, 1950, ch. 169, § 1 (Art. 123), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offenses punishable under this section, see section 929 of this title.

Federal offenses, see section 471 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who-

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to

defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87-385, § 1(l), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Section 2 of Pub. L. 87-385 provided that: "This Act [adding this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October, 1961]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which-

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
924	50:718.	May 5, 1950, ch. 169, § 1 (Art. 134), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 114 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statute at Large)</i>
925(a).....	50:719(a).	May 5, 1950, ch. 169, § 1 (Art. 125), 64 Stat. 141.
925(b).....	50:719(b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Burglary when intending to commit offense punishable under this section, see section 929 of this title.
 Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
926(a).....	50:720(a).	May 5, 1950, ch. 169, § 1 (Art. 126), 64 Stat. 141.
926(b).....	50:720(b).	

In subsection (b), the words "of this section" are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Burglary when intending to commit offense punishable under this section, see section 929 of this title.
 Federal offense, see section 81 of Title 18, Crimes and Criminal Procedure.
 Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 7-I.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
927.....	50:721.	May 5, 1950, ch. 169, § 1 (Art. 127), 64 Stat. 141.

The words "of any description" are omitted as surplusage.

CROSS REFERENCE

Article to be explained, see section 937 of this title.
 Burglary when intending to commit offense punishable under this section, see section 929 of this article.
 Federal offenses-
 Extortion and threats, see section 871 et seq. of Title 18, Crimes and Criminal Procedure.
 Interference with commerce by threats or violence see section 1951 of Title 18.
 Statute of limitations, see section 84 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who-
 (1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or
 (2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
928(a).....	50:722(a).	May 5, 1950, ch. 169, § 1 (Art. 128), 64 Stat. 141.
928(b).....	50:722(b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Burglary when intending to commit offense punishable under this section, see section 929 of this title.
 Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.
 Statute of limitations, see section 843 of this title.
 Superior commissioned officer, assaulting, see section 890 of this title.
 Warrant officer, noncommissioned officer, or petty officer, assaulting, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 929 Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under

sections 918-928 of this title (articles 118-128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
929	50:723.	May 5, 1950, ch. 169, § 1 (Art. 129), 64 Stat. 142.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Robbery and burglary, federal offenses, see section 2111 et seq. of Title 18, Crimes and Criminal Procedure.
 Statute of limitations; see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
930	50:724.	May 5, 1950, ch. 169, § 1 (Art. 130), 64 Stat. 142.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly-

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Oct. 18, 1976, Pub. L. 94-550, § 3, 90 Stat. 2535; Oct. 12, 1982, Pub. L. 97-295, § 1(13), 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
931	50:725.	May 5, 1950, ch. 169, § 1 (Art. 131), 64 Stat. 142.

The words "in a" are inserted before the words "course of justice".

AMENDMENTS

1982-Par. (2). Pub. L. 97-295 struck out "United States Code," after "title 28,".

1976-Pub. L. 94-550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

CROSS REFERENCES

Article to be explained, see section 937 of this title.
 Federal offense, see section 1621 of Title 18, Crimes and Criminal Procedure.
 Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 932. Art. 132. Frauds against the United States

Any person subject to this chapter-

(1) who, knowing it to be false or fraudulent-

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof-

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
932	50:726.	May 5, 1950, ch. 169, § 1 (Art. 132), 64 Stat. 142.

The word "it" is substituted for the words "the same" throughout the revised section.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Federal offenses-

Claims and services in matters affecting Government, see section 285 et seq. of Title 18, Crimes and Criminal Procedure.

Fraud and false statements, see section 1001 et seq. of Title 18.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
933	50:727.	May 5, 1950, ch. 169, § 1 (Art. 133), 64 Stat. 142.

The word "commissioned" is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
934	50:738.	May 5, 1950, ch. 169, § 1 (Art. 134), 64 Stat. 142.

The words "shall be" are inserted before the word "punished".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER XI - MISCELLANEOUS PROVISIONS

Sec. Art.

- 935. 135. Courts of inquiry.
- 936. 136. Authority to administer oaths and to act as notary.
- 937. 137. Articles to be explained.
- 938. 138. Complaints of wrongs.
- 939. 139. Redress of injuries to property.
- 940. 140. Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
935(a)	50:731(a).	May 5, 1950, ch. 169, § 1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words "Secretary concerned" are substituted for the words Secretary of a Department".

In subsection (b), the word "commissioned" is inserted for clarity. The word "consists" is substituted for the words "shall consist".

In subsection (c), the word "has" is substituted for the words "shall have".

In subsection (e), the words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1.

In subsection (g), the word "may" is substituted for the word "shall".

In subsection (h), the word "If" is substituted for the words "In case".

CROSS REFERENCES

Challenges, general or special court-martial, see section 841 of this title.

Counsel, right to before general or special court-martial, see section 838 of this title.

Evidence, courts-martial-

Depositions, see section 849 of this title.

Opportunity to obtain witnesses and other evidence, see section 846 of this title.

Refusal of witnesses to appear or testify, see section 847 of this title.

Judge Advocate Generals of the Army and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 8072 of this title.

Military judge of general court-martial, see section 826 of this title.

Oaths administration of: notary, general powers of, see section 936 of this title.

Oaths, general and special courts-martial, see section 842 of this title.

Persons authorized to convene general courts-martial, see section 822 of this title.

Records of courts of inquiry, admissibility, see section 850 of this title.

§ 936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice, and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; July 5, 1960, Pub. L. 86-589, 74 Stat. 329; Dec. 8, 1967, Pub. L. 90-179, § 1(7), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90-632, § 2(34), 82 Stat. 1343; Dec. 6, 1983, Pub. L. 98-209, § 2(f), 97 Stat. 1393; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 804(c), 100 Stat. 3907; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
936(a).....	50:732(a).	May 5, 1950, ch. 169, § 1 (Art. 136), 64 Stat. 143.
936(b).....	50:732(b).	
936(c).....	50:732(c).	
936(d).....	50:732(d).	

In subsection (a), the word "may" is substituted for the words "shall have authority to". The word "shall" before the words "have the general powers" is omitted as surplusage. The words "the continental limits" are omitted, since section 101(l) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words "in the armed forces" are omitted as surplusage.

In subsection (b), the word "may" is substituted for the words "shall have authority to".

In subsection (c), the words "of any character" are omitted as surplusage. The word "may" is substituted for the word "shall".

In subsection (d), the word "is" is substituted for the words "shall be".

AMENDMENTS

1988-Subsec. (a). Pub. L. 100-456 struck out "the Canal Zone," before "Puerto Rico,".

1986-Subsecs. (a), (b). Pub. L. 99-661 inserted "or performing inactive-duty training" after "active duty".

1983-Subsec. (a)(1). Pub. L. 98-209, § 2(f)(1), struck out "of the Army, Navy, Air Force, and Marine Corps" after "All judge advocates".

Subsec. (a)(2) to (7). Pub. L. 98-209, § 2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968-Subsec. (b). Pub. L. 90-632 substituted "military judge" for "law officer" in par. (1).

1967-Subsec. (a)(l). Pub. L. 90-179 inserted references to judge advocates of the Navy and the Marine corps.

1960-Subsec. (a). Pub. L. 86-589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(l) 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 on the first day of the tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 937. Art. 137. Articles to be explained

(a)(l) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within six days after)-

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again-

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this title (articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Nov. 14, 1986, Pub. L. 99-661, div. A, title VIII, § 804(d), 100 Stat. 3907.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
937	50:733.	May 5, 1950, ch. 169, § 1 (Art. 137), 64 Stat. 144.

The word "each" is substituted for the word "every". The word "member" is substituted for the word "person". The words "in [any of] the armed forces of the United States" are omitted as surplusage.

REFERENCE IN TEXT

The Uniform Code of Military Justice, referred to in subsecs. (a)(l) and (b), is classified to this chapter.

AMENDMENTS

1986-Pub. L. 99-661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of: and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
938	50:734.	May 5, 1950, ch. 169, § 1 (Art. 138), 64 Stat. 144.

The words "commanding officer" are substituted for the word "commander". The word "who" is inserted after the word "and". The word "commissioned" is inserted after the word "superior" for clarity. The words "The officer exercising general court-martial jurisdiction" are substituted for the words "That officer" for clarity. The word "send" is substituted for the word "transmit". The word "Secretary" is substituted for the word "Department" for accuracy, since the "Department", as an entity, could not act upon the complaint.

CROSS REFERENCES

Article to be explained. see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 931 of this title.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
939(a).....	50:735(a).	May 5, 1950, ch. 169, § 1 (Art. 139), 64 Stat. 144.
939(b).....	50:735(b).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "under" is substituted for the words "subject to". The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 7. The words "it has" are substituted for the words "shall have" in the second sentence. The word "is" is substituted for the words "shall be" before the words "subject" and "conclusive". The word "commissioned" is inserted for clarity.

In subsection (b), the word "If" is substituted for the word "Where". The word "considered" is substituted for the word "deemed".

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70-A Stat. 78.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
940.....	50:736.	May 5, 1950, ch. 169, § 1 (Art. 140), 64 Stat. 145.

The word "may" is substituted for the words "is authorized to *** to".

CHAPTER 48 - MILITARY CORRECTIONAL FACILITIES

- Sec.
- 951. Establishment; organization; administration.
- 952. Parole.
- 953. Remission or suspension of sentence; restoration to duty; reenlistment.
- 954. Voluntary extension; probation.
- 955. Prisoners transferred to or from foreign countries.
- 956. Deserters, prisoners, members absent without leave: expenses and rewards.

AMENDMENTS

1984-Pub. L. 98-525, title XIV, § 1401(b)(2), Oct. 19, 1984, 98 Stat. 2615, added item 956.

1980-Pub. L. 96-513, title V, § 511(26), Dec. 13, 1980, 94 Stat. 2922, added item 955.

§ 951. Establishment; organization; administration

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities as are necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall-

(1) designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department: and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired at such facilities.

(Added Pub. L. 90-377, § 1, July 5, 1968, 82 Stat. 287, and amended Pub. L. 96-513, title V, § 511(27), Dec. 12, 1980, 94 Stat. 2922.)