military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps. (Aug. 10, 1956, ch. 1041, 70A Stat. 35; Mar. 28, 1958, Pub. L. 85–355, 72 Stat. 66.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 773 (a) | 10: 1393 (words between 4th and 7th semicolons of 1st proviso, and 2d proviso, of 1st par.). | June 3, 1916, ch. 134, § 125 (words between 4th and 7th semicolons of 1st proviso, and 2d and last provisos, of 1st par.), 39 Stat. 216; June 4, 1920, ch. 228, § 8, 41 Stat. 836; Sept. 15, 1951, ch. 402, 65 Stat. 323; July 6, 1953, ch. 180, § 1, 67 Stat. 140. |
| 773 (b) | 10: 1393 (last proviso of 1st par.). | |

In subsection (a), the word "mark" is omitted as surplusage.

In subsection (a) (2), the words "persons discharged honorably or under honorable conditions from" are substituted for the words "entirely of honorably discharged officers or enlisted men, or both, of". The words "Regular or Volunteer" are omitted as surplusage. The words "when authorized by regulations prescribed by" are substituted for the words "upon occasions authorized by regulations of".

AMENDMENTS

1958—Subsec. (c) added by Pub. L. 85–355.

CROSS REFERENCES

Provisions respecting sale of exterior articles of uniform to person discharged honorably from Army or Air Force as not modifying this section, see sections 4621 (f), 9621 (f) of this title.

### § 774. Applicability of chapter.

This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction. (Aug. 10, 1956, ch. 1041, 70A Stat. 36.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 774 | 10: 1393 (less 1st and last pars.). | June 3, 1916, ch. 134, § 125 (less 1st and last pars.), 39 Stat. 216; Apr. 15, 1948, ch. 188, 62 Stat. 172; June 25, 1948, ch. 645, § 21 (as applicable to § 125 of the Act of June 3, 1916, ch. 134), 62 Stat. 864; May 24, 1949, ch. 139, §§ 15 (b) (less last par.), 142 (as applicable to the Act of Apr. 15, 1948, ch. 188), 63 Stat. 91, 110. |

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

## Chapter 47.—UNIFORM CODE OF MILITARY JUSTICE


| Subchap. | Sec. | Art. |
|---|---|---|
| I. General Provisions | 801 | 1 |
| II. Apprehension and Restraint | 807 | 7 |
| III. Non-Judicial Punishment | 815 | 15 |
| IV. Court-Martial Jurisdiction | 816 | 16 |
| V. Composition of Courts-Martial | 822 | 22 |
| VI. Pre-Trial Procedure | 830 | 30 |
| VII. Trial Procedure | 836 | 36 |
| VIII. Sentences | 855 | 55 |
| IX. Review of Courts-Martial | 859 | 59 |
| X. Punitive Articles | 877 | 77 |
| XI. Miscellaneous Provisions | 935 | 135 |


AMENDMENTS

1958—Pub. L. 85–861, § 33 (a) (6), Sept. 2, 1958, 72 Stat. 1564, amended analysis of subchapters by substituting 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.

### 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) "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 the Treasury.

(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) "Commanding officer" includes only commissioned officers.

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

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

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

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

(8) "Military" refers to any or all of the armed forces.

(9) "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) "Law officer" means an official of a general court-martial detailed in accordance with section 826 of this title (article 26).

(11) "Law specialist" means a commissioned officer of the Navy or Coast Guard designated for special duty (law).

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 36.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 "shall be construed to refer * * * 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.

EFFECTIVE DATE

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

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 the Treasury, see section 248a of Title 5, Executive Departments and Government Officers and Employees.

Judge Advocates General of the Army, Navy, and Air Force, see sections 3037, 5148 and 8072 of this title.

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

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 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.

(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 Coast and Geodetic Survey, 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 following: that part of Alaska east of longitude 172 degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, 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 following: that part of Alaska east of longitude 172 degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 37.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

GUAM

Act Aug. 1, 1956, ch. 852, § 23, 70 Stat. 911, amended former section 552 of Title 50, War and National Defense, from which this section was derived, to include Guam in clauses (11) and (12). See section 49 (a) of act Aug. 10, 1956, set out as a note preceding section 101 of this title.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 18, 1955, 20 F. R. 6057, 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.

Every member of the armed forces of the United States is expected to measure up to the standards embodied in this Code of Conduct while he is in combat or in captivity. To ensure achievement of these standards, each member of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip him to counter and withstand all enemy efforts against him, and shall be fully instructed as to the behavior and obligations expected of him during combat or captivity.

The Secretary of Defense (and the Secretary of the Treasury 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.

DWIGHT D. EISENHOWER

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American fighting man. I serve 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 my men 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 bound to give only 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 man, 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.

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

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 803 (a) | 50: 553 (a). | May 5, 1950, ch. 169, § 1 (Art. 3), 64 Stat. 109. |
| 803 (b) | 50: 553 (b). | |
| 803 (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 * * * may" are substituted for the words "Any * * * shall not". The word "later" is substituted for the word "subsequent".

CROSS REFERENCES

Article to be explained, see 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 804 (a) | 50: 554 (a). | May 5, 1950, ch. 169, § 1 (Art. 4), 64 Stat. 110. |
| 804 (b) | 50: 554 (b). | |
| 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 all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. 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, law officer, 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

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".

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 (g) 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

REWARD FOR APPREHENSION OF DESERTERS, PRISONERS, AND SOLDIERS ABSENT WITHOUT LEAVE FROM THE ARMY

Pub. L. 85-724, title III, § 301, Aug. 22, 1958, 72 Stat. 713, provided in part that a reward (not to exceed $25 in any one case) shall be paid for the apprehension and delivery of deserters, prisoners, and soldiers absent without leave.

Similar provisions were contained in the following prior acts:

Aug. 2, 1957, Pub. L. 85-117, title III, § 301, 71 Stat. 313.
July 2, 1956, ch. 438, title III, § 301, 70 Stat. 456.
July 13, 1955, ch. 358, title III, § 301, 69 Stat. 303.
June 30, 1954, ch. 432, title IV, § 401, 68 Stat. 338.
Aug. 1, 1953, ch. 305, title III, § 301, 67 Stat. 338.
July 10, 1952, ch. 630, title III, § 301, 66 Stat. 519.
Oct. 18, 1951, ch. 512, title III, § 301, 65 Stat. 426.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, 64 Stat. 732.
Oct. 29, 1949, ch. 737, title III, § 301, 63 Stat. 990.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 388.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 185, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.
June 30, 1941, ch. 262, § 1, 55 Stat. 371.
June 13, 1940, ch. 343, § 1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598.
June 11, 1938, ch. 347, § 1, 52 Stat. 648.
July 1, 1937, ch. 423, § 1, 50 Stat. 448.
May 15, 1936, ch. 404, § 1, 49 Stat. 1284.
Apr. 9, 1935, ch. 54, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 619.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575.
July 14, 1932, ch. 482, title I, 47 Stat. 668.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281.
May 28, 1930, ch. 348, title I, 46 Stat. 436.
Feb. 23, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 29, 1928, ch. 232, title I, 45 Stat. 330.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 259.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

REWARD FOR APPREHENSION OF DESERTERS, PRISONERS, AND MEMBERS ABSENT WITHOUT LEAVE FROM THE AIR FORCE

Pub. L. 85-724, title V, § 501, Aug. 22, 1958, 72 Stat. 722, provided in part that a reward (not to exceed $25 in any one case) shall be paid for the apprehension and delivery of deserters, prisoners, and members absent without leave.

Similar provisions were contained in the following prior acts:

Aug. 2, 1957, Pub. L. 85-117, title V, § 501, 71 Stat. 321.
July 2, 1956, ch. 488, title V, § 501, 70 Stat. 465.
July 13, 1955, ch. 358, title V, § 501, 69 Stat. 312.
June 30, 1954, ch. 432, title VI, § 601, 68 Stat. 348.
Aug. 1, 1953, ch. 305, title V, § 501, 67 Stat. 348.
July 10, 1952, ch. 630, title V, § 501, 66 Stat. 530.
Oct. 18, 1951, ch. 512, title V, § 501, 65 Stat. 443.
Sept. 6, 1950, ch. 896, ch. X, title V, § 501, 64 Stat. 750.
Oct. 29, 1949, ch. 787, title V, § 501, 63 Stat. 1015.

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 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 * * * 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 sections 3638, 5536, 9638 of this title.

Summary courts-martial, jurisdiction of, see section 820 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 812 | 50: 566. | 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.

### § 813. Art. 13. Punishment prohibited before trial.

Subject to section 857 of this title (article 57), no person, while being held for trial or the result of 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 infractions of discipline. (Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

CROSS REFERENCES

Article to be explained, see 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

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

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".

CROSS REFERENCES

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

Effective date of federal sentence, see section 3568 of Title 18, Crimes and Criminal Procedure.

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

(1) upon officers of his command—

(A) withholding of privileges for not more than two consecutive weeks;

(B) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of not more than one-half of one month's pay; and

(2) upon other military personnel of his command—

(A) withholding of privileges for not more than two consecutive weeks;

(B) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(C) extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included;

(D) reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command;

(E) if imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or

(F) 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) The Secretary concerned may, by regulation, place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise those powers, and the applicability of this article to an accused who demands trial by court-martial.

(c) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b).

(d) 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 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.

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

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 815 (a) | 50: 571 (a). | May 5, 1950, ch. 169, § 1 (Art. 15), 64 Stat. 112. |
| 815 (b) | 50: 571 (b). | |
| 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".

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.

## 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 law officer and not less than five members;

(2) special courts-martial, consisting of not less than three members; and

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 42.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

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

HISTORICAL AND REVISION NOTES

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

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

### § 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 before the court has been made. (Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

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

Subject to section 817 of this title (article 17), 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, unless under section 815 of this title (article 15) he has been permitted and has elected to refuse punishment under that article. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 815 of this title (article 15), trial shall 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 and Air Force to receive, revise, and have recorded proceedings of military commissions, see sections 3037, 8072 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. Law officer of a general 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.

**§ 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 concerned;

(3) 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;

(4) 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;

(5) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

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

(7) 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.)

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 (Art. 22), 64 Stat. 115. |
| 822 (b) | 50: 586 (b). | |

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".

CROSS REFERENCES

Complaints of wrongs, see section 938 of this title.

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

Initial action on record, see section 860 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 (Art. 23), 64 Stat. 115. |
| 823 (b) | 50: 587 (b). | |

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. 24. 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, 1950, ch. 169, § 1 (Art. 24), 64 Stat. 116. |
| 824 (b) | 50: 588 (b). | |

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. 25. 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 convening of the court, the accused personally has requested 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 convened 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, the word "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. (Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

CROSS REFERENCES

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

## § 826. Art. 26. Law officer of a general court-martial.

(a) The authority convening a general court-martial shall detail as law officer thereof a commissioned officer who is a member of the bar of a Federal court or of the highest court of a State and who is certified to be qualified for such duty by the Judge Advocate General of the armed force of which he is a member. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer may not consult with the members of the court, other than on the form of the findings as provided in section 839 of this title (article 39), 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.)

HISTORICAL AND REVISION NOTES

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

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".

CROSS REFERENCES

Authentication of record, see section 854 of this title.

Definition of law officer, see section 801 (10) 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 (b) of this title.

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

(a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he considers appropriate. No person who has acted as investigating officer, law officer, 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 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 of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, 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) 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

(2) if the trial counsel is a judge advocate, or a law specialist, 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 827 (a) | 50: 591 (a). | May 5, 1950, ch. 169, § 1 (Art. 27), 64 Stat. 117. |
| 827 (b) | 50: 591 (b). | |
| 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 (b) 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.

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 (b) 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.

### § 828. Art. 28. 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 filing of the position involved is not appointment to an office in the constitutional sense.

CROSS REFERENCES

Judge Advocate Generals of Army and Air Force to receive, revise and have recorded proceedings of courts of inquiry and military commissions, see sections 3937, 8072 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 accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial 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. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial 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. When the new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel. (Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

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.

## 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 830 (a) | 50: 601 (a). | May 5, 1950, ch. 169, § 1 (Art. 30), 64 Stat. 118. |
| 830 (b) | 50: 601 (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 (b) 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 831 (a) | 50: 602 (a). | May 5, 1950, ch. 169, § 1 (Art. 31), 64 Stat. 118. |
| 831 (b) | 50: 602 (b). | |
| 831 (c) | 50: 602 (c). | |
| 831 (d) | 50: 602 (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.

### § 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. 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. 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

CROSS REFERENCES

Oaths, administration of; notary, general powers of, see section 936 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

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

### § 834. Art. 34. 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 or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this chapter and is warranted by evidence indicated in the report of investigation.

(b) 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.)

HISTORICAL AND REVISION NOTES

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

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

### § 835. Art. 35. 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 before a general court-martial within a period of five days after the service of the charges upon him, or before a special court-martial within a period of three days after the service of the charges upon him. (Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

## 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.
840. 40. Continuances.
841. 41. Challenges.
842. 42. Oaths.
843. 43. Statute of limitations.
844. 44. Former jeopardy.
845. 45. Pleas of the accused.
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.
851. 51. Voting and rulings.
852. 52. Number of votes required.
853. 53. Court to announce action.
854. 54. Record of trial.

### § 836. Art. 36. President may prescribe rules.

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 836 (a)<br>836 (b) | 50: 611 (a).<br>50: 611 (b). | May 5, 1950, ch. 169, § 1 (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".

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 and Air Force to receive, revise, and have recorded proceedings of courts of inquiry and military commissions, see sections 3037, 8072 of this title.

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

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, law officer, 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 50.)

HISTORICAL AND REVISION NOTES

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

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

CROSS REFERENCES

Article to be explained, see 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) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 827 of this title (article 27). Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 838 (a) | 50: 613 (a). | May 5, 1950, ch. 169, § 1 (Art. 38), 64 Stat. 120. |
| 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".

CROSS REFERENCES

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

Courts of inquiry, representation by counsel, see section 935 (c) of this title.

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

## § 839. Art. 39. Sessions.

When a general or special court-martial deliberates or votes, only the members of the court may be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and those proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer, 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 general court-martial cases, the law officer. (Aug. 10, 1956, ch. 1041, 70A Stat. 51.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

CROSS REFERENCES

Record of trial, see section 854 of this title.

Voting and rulings, see section 851 of this title.

## § 840. Art. 40. Continuances.

A court-martial 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.)

HISTORICAL AND REVISION NOTES

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

## § 841. Art. 41. Challenges.

(a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. 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 law officer may not be challenged except for cause. (Aug. 10, 1956, ch. 1041, 70A Stat. 51.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

CROSS REFERENCES

Courts of inquiry, see section 935 (d) of this title.

Voting and rulings, see section 851 of this title.

## § 842. Art. 42. Oaths.

(a) The law officer, interpreters, and, in general and special courts-martial, members, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath in the presence of the accused to perform their duties faithfully.

(b) Each witness before a court-martial shall be examined on oath. (Aug. 10, 1956, ch. 1041, 70A Stat. 51.)

HISTORICAL AND REVISION NOTES

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

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".

CROSS REFERENCES

Courts of Inquiry, see section 935 (e) of this title.

## § 843. Art. 43. Statute of limitations.

(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).

(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. (Aug. 10, 1956, ch. 1041, 70A Stat. 51.)

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".

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.

## § 844. 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 arraigned before a court-martial 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 improvidently 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

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

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

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 subpenaed 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 subpenaed 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 847 (a) | 50: 622 (a). | May 5, 1950, ch. 169, § 1 (Art. 47), 64 Stat. 123. |
| 847 (b) | 50: 622 (b). | |
| 847 (c) | 50: 622 (c). | |
| 847 (d) | 50: 622 (d). | |

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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 30), any party may take oral or written depositions unless 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 reason-

able 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 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 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

CROSS REFERENCES

Authority competent to convene court-martial, see sections 822—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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 850 (a) | 50: 625 (a). | May 5, 1950, ch. 169, § 1 (Art. 50), 64 Stat. 124. |
| 850 (b) | 50: 625 (b). | |
| 850 (c) | 50: 625 (c). | |

In subsections (a) and (b), the word "commissioned" is inserted for clarity.

CROSS REFERENCES

Judge Advocate Generals of Army and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 8072 of this title.

**§ 851. Art. 51. Voting and rulings.**

(a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence 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 law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, is final and constitutes the ruling of the court. However, the law officer may change his ruling at any time during the 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 law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court—

(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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 voce".

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".

CROSS REFERENCES

Law officer prohibited from voting, see section 826 (b) 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 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. 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 852 (a) | 50: 627 (a). | May 5, 1950, ch. 169, § 1 (Art. 52), 64 Stat. 125. |
| 852 (b) | 50: 627 (b). | |
| 852 (c) | 50: 627 (c). | |

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

In subsection (b) (2), 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.

CROSS REFERENCES

Objections to rulings, voice vote on, see section 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 853 | 50: 628. | May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125. |

The word "A" is substituted for the word "Every".

### § 854. Art. 54. Record of trial.

(a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and the record shall be authenticated by the signatures of the president and the law officer. If the record cannot be authenticated by either the president or the law officer, by reason of his death, disability, or absence, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for any of those reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the President may prescribe.

(c) 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 854 (a) | 50: 629 (a). | May 5, 1950, ch. 169, § 1 (Art. 54), 64 Stat. 125. |
| 854 (b) | 50: 629 (b). | |
| 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".

CROSS REFERENCES

Courts of inquiry, see section 935 (h) 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.

**§ 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.

**§ 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".

**§ 857. Art. 57. Effective date of sentences.**

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

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

HISTORICAL AND REVISION NOTES

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

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

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

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

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 (d) 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

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

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

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

DONATION TO PRISONER UPON RELEASE FROM CONFINEMENT

Pub. L. 85–724, title III, § 301, Aug. 22, 1958, 72 Stat. 713, provided in part that a donation of not to exceed $25 shall be given to each prisoner upon each release from confinement in an Army or contract prison (other than a disciplinary barracks).

Similar provisions were contained in the following prior acts:

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, 71 Stat. 313.
July 2, 1956, ch. 488, title III, § 301, 70 Stat. 456.
July 13, 1955, ch. 358, title III, § 301, 69 Stat. 303.
June 30, 1954, ch. 432, title IV, § 401, 68 Stat. 339.
Aug. 1, 1953, ch. 305, title III, § 301, 67 Stat. 338.
July 10, 1952, ch. 630, title III, § 301, 66 Stat. 519.
Oct. 18, 1951, ch. 512, title III, § 301, 65 Stat. 426.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, 64 Stat. 732.
Oct. 29, 1949, ch. 787, title III, § 301, 63 Stat. 991.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 389.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 187, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.
June 30, 1941, ch. 262, § 1, 55 Stat. 371.
June 13, 1940, ch. 343, § 1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598.

June 11, 1938, ch. 34, § 1, 52 Stat. 648.
July 1, 1937, ch. 423, § 1, 50 Stat. 448.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1284.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 619.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575.
July 14, 1932, ch. 482, title I, 47 Stat. 668.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 436.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 330.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 259.

DONATION TO PRISONER UPON RELEASE FROM MILITARY PRISON AND TO ENLISTED MEMBERS OF THE AIR FORCE UPON RELEASE FROM CONFINEMENT

Pub. L. 85–724, title V, § 501, Aug. 22, 1958, 72 Stat. 722, provided in part that a donation of not to exceed $25 shall be given to each civilian prisoner upon each release from a military prison, and to each enlisted man of the Air Force discharged otherwise than honorably upon each release from confinement under court-martial sentence.

Similar provisions were contained in the following prior acts:

Aug. 2, 1957, Pub. L. 85–117, title V, § 501, 71 Stat. 321.
July 2, 1956, ch. 488, title V, § 501, 70 Stat. 465.
July 13, 1955, ch. 358, title V, § 501, 69 Stat. 313.
June 30, 1954, ch. 432, title VI, § 601, 68 Stat. 348.
Aug. 1, 1953, ch. 305, title V, § 501, 67 Stat. 348.
July 10, 1952, ch. 630, title V, § 501, 65 Stat. 530.
Oct. 18, 1951, ch. 512, title V, § 501, 65 Stat. 443.
Sept. 6, 1950, ch. 896, ch. X, title V, § 501, 64 Stat. 750.
Oct. 29, 1949, ch. 787, title V, § 501, 63 Stat. 1015.

CROSS REFERENCES

Enlisted members of Army and Air Force, honorable restoration to active duty, see sections 3663 (b), 8663 (b) of this title.

Enlisted members required to make up lost time, see section 972 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.

United States Disciplinary Barracks, see section 3661 et seq. of this title.

## Subchapter IX.—Review of Courts-Martial

Sec. Art.
859. 59. Error of law; lesser included offense.
860. 60. Initial action on the record.
861. 61. Same—General court-martial records.
862. 62. Reconsideration and revision.
863. 63. Rehearings.
864. 64. Approval by the convening authority.
865. 65. Disposition of records after review by the convening authority.
866. 66. Review by board of 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.

### § 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 (Art. 59), 64 Stat. 127. |
| 859 (b) | 50: 646 (b). | |

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

### § 860. Art. 60. Initial action on the record.

After a trial by court-martial the record shall be forwarded to the convening authority, and action thereon may 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

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 824 and 823 of this title (articles 23 and 24), noncommissioned officers who are "officers in charge" may convene special and summary courts-martial.

CROSS REFERENCES

Authority to convene general, special or summary courts-martial, see sections 822—824 of this title.

Record of trial, see section 854 of this title.

### § 861. Art. 61. Same—General court-martial records.

The convening authority shall refer the record of each general court-martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to the Judge Advocate General of the armed force of which the accused is a member. (Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 861 | 50: 648. | May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127. |

The word "each" is substituted for the word "every".

### § 862. Art. 62. Reconsideration and revision.

(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified

without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned—

(1) for reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;

(2) for reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(3) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 862 (a) | 50: 649 (a). | May 5, 1950, ch. 169, § 1 (Art. 62), 64 Stat. 127. |
| 862 (b) | 50: 649 (b). | |

**§ 863. Art. 63. Rehearings.**

(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 864. Art. 64. Approval by the convening authority.**

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence. (Aug. 10, 1956, ch. 1041, 70A Stat. 58.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

CROSS REFERENCES

Disapproval by the convening authority, see section 863 of this title.

**§ 865. Art. 65. Disposition of records after review by the convening authority.**

(a) When the convening authority has taken final action in a general court-martial case, he shall 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.

(b) If the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to be reviewed by a board of review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be sent to the appropriate Judge Advocate General to be reviewed by a board of review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or the Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Department of the Treasury, and shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation. (Aug. 10, 1956, ch. 1041, 70A Stat. 59.)

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".

**§ 866. Art. 66. Review by board of review.**

(a) Each Judge Advocate General shall constitute in his office one or more boards of review, each composed of not less than three commissioned officers or civilians, each of whom must be a member of the bar of a Federal court or of the highest court of a State.

(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death,

dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more.

(c) In a case referred to it, the board of 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 board of 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, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of 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 boards of 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 boards of review. (Aug. 10, 1956, ch. 1041, 70A Stat. 59.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 866 (a) | 50: 653 (a). | May 5, 1950, ch. 169, § 1 (Art. 66), 64 Stat. 128. |
| 866 (b) | 50: 653 (b). | |
| 866 (c) | 50: 653 (c). | |
| 866 (d) | 50: 653 (d). | |
| 866 (e) | 50: 653 (e). | |
| 866 (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.

CROSS REFERENCES

Review in the office of the Judge Advocate General, see section 869 of this title.

**§ 867. Art. 67. Review by the Court of Military Appeals.**

(a) (1) There is a Court of Military Appeals, located for administrative purposes in the Department of Defense. The Court of Military Appeals 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 that 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 of the highest court of a State. Each judge is entitled to a salary of $25,500 a year and is eligible for reappointment. The President shall designate from time to time one of the judges to act as Chief Judge. The Court of Military Appeals 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. Upon his certificate, each judge is entitled to be paid by the Secretary of Defense (1) all necessary traveling expenses, and (2) his reasonable maintenance expenses, but not more than $15 a day, incurred while attending court or transacting official business outside the District of Columbia.

(2) The terms of office of the three judges first taking office after February 28, 1951, expire, 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. The terms of office of all successors expire 15 years after the expiration of the terms for which their predecessors were appointed, but any judge appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed may be appointed only for the unexpired term of his predecessor.

(3) Judges of the 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.

(4) If a Judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of a United States Court of Appeals to fill the office for the period of disability.

(b) The Court of Military Appeals shall review the record in—

(1) all cases in which the sentence, as affirmed by a board of review, affects a general or flag officer or extends to death;

(2) all cases reviewed by a board of review which the Judge Advocate General orders sent to the Court of Military Appeals for review; and

(3) all cases reviewed by a board of 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 has 30 days from the time when he is notified of the decision of a board of review to petition the Court of Military Appeals for review. The court shall act upon such a petition within 30 days of the receipt thereof.

(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 board of 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 board of 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) 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 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 the Treasury, 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 60.)

HISTORICAL AND REVISION NOTES

| 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 * * * to" 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".

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.

### § 868. Art. 68. Branch offices.

Whenever the President considers such action necessary, he may direct the Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in that branch office one or more boards of review. That Assistant Judge Advocate General and any such board of review may perform for that command, under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a board of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President. (Aug. 10, 1956, ch. 1041, 70A Stat. 61.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

CROSS REFERENCES

Review by board of review, see section 866 of this title.

### § 869. Art. 69. Review in the office of the Judge Advocate General.

Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by section 866 of this title (article 66), shall be examined in the office of the Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if the Judge Advocate General so directs, the record shall be reviewed by a board of review in accordance with 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)). (Aug. 10, 1956, ch. 1041, 70A Stat. 61.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

**§ 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 board of review or the Court of Military Appeals when directed to do so by the Judge Advocate General.

(c) Appellate defense counsel shall represent the accused before the board of review or the Court of Military Appeals—

(1) when he is requested to do so by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent a case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Appeals or the board of review 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 870 (a) | 50: 657 (a). | May 5, 1950, ch. 169, § 1 (Art. 70), 64 Stat. 130. |
| 870 (b) | 50: 657 (b). | |
| 870 (c) | 50: 657 (c). | |
| 870 (d) | 50: 657 (d). | |
| 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".

CROSS REFERENCES

Trial counsel and defense counsel, duties, see section 838 of this title.

**§ 871. Art. 71. Execution of sentence; suspension of sentence.**

(a) No court-martial sentence extending to death or involving a general or flag officer may be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of a commissioned officer (other than a general or flag officer), cadet, or midshipman may be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. 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) 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 board of review and, in cases reviewed by it, the Court of Military Appeals.

(d) All other court-martial sentences, unless suspended, 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. (Aug. 10, 1956, ch. 1041, 70A Stat. 62.)

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".

CROSS REFERENCES

Pay and allowances of enlisted members of Army and Air Force not to accrue during suspended sentence of dishonorable discharge, see sections 3636, 8636 of this title.

Vacation of suspension, see 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) | Source (Statutes at Large) |
|---|---|---|
| 872 (a)<br>872 (b)<br>872 (c) | 50: 659 (a).<br>50: 659 (b).<br>50: 659 (c). | May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131. |

In subsection (a), the word "Before" is substituted for the words "Prior to".

In subsection (b), the words "be effective * * * to" 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 * * * 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 one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition the Judge Advocate General for a new trial on the ground of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the board or court, as the case may be, for action. Otherwise the Judge Advocate General shall act upon the petition. (Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

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.

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

Review by—

Board of review, see section 866 of this title.

Court of Military Appeals, see section 867 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)<br>874 (b) | 50: 661 (a).<br>50: 661 (b). | May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132. |

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.

### § 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 imposed 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 875 (a)<br>875 (b)<br>875 (c) | 50: 662 (a).<br>50: 662 (b).<br>50: 662 (c). | May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132. |

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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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".

## 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.
890. 90. Assaulting or willfully disobeying superior commissioned officer.
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.
900. 100. Subordinate compelling surrender.
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.
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.
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.
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.
934. 134. General article.


### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 877 | 50: 671. | 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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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 representation 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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 NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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 offense 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 885 (a) | 50: 679 (a). | May 5, 1950, ch. 169, § 1 (Art. 85), 64 Stat. 135. |
| 885 (b) | 50: 679 (b). | |
| 885 (c) | 50: 679 (c). | |

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—

Forfeiture of right to pension by deserters, see sections 3637, 8637 of this title.

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.

Nationality, loss of by deserting, see section 1481 of Title 8, Aliens and Nationality.

Naturalization, deserter ineligible for, see section 1425 of Title 8.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Public office, deserter ineligible to hold, see section 1425 of Title 8.

Solicitation of offense, see section 882 of this title.

Statute of limitations, see section 843 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 886 | 50: 680. | May 5, 1950, ch. 169, § 1 (Art. 86), 64 Stat. 135. |

The words "proper" 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 843 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 court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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 the Treasury, 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large). |
|---|---|---|
| 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".

CROSS REFERENCES

Article to be explained, see 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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—
Generally, see section 928 of this title.
Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.
Plea of guilty, prohibition against reception, see section 845 (b) 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 693 | 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 894 (a)<br>894 (b) | 50: 688 (a).<br>50: 688 (b). | May 5, 1950, ch. 169, § 1 (Art. 94), 64 Stat. 136. |

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 2337 and 2388 of Title 18.

Mutiny of seamen, see sections 2192, 2193 of Title 18.

Seditious conspiracy, see section 2384 of Title 18.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Solicitation of offense, see section 882 of this title.

Statute of limitations, see section 843 of this title.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 895 | 50: 689. | May 5, 1950, ch. 169, § 1 (Art. 95), 64 Stat. 136. |

CROSS REFERENCES

Apprehension, see sections 807 and 803 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 897. Art. 97. 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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 pillage;

(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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Solicitation of offense, see sections 882 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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 pillaging;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Statute of limitations, see section 843 of this title.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

## § 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 maufacturing 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 (a) (29), (d) (3), 1225 (c), 1251 (a) (7) and 1327 of Title 8, Aliens and Nationality.

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

Emergency detention of persons likely to engage in espionage, see sections 813—826 of Title 50, War and National Defense.

Communist-action organization, members of, see section 843 of Title 50.

Espionage and censorship, see section 791 et seq. of Title 18, Crimes and Criminal Procedure.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

## § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

## § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

Dealing in quartermaster supplies prohibited, see sections 3631, 8631 of this title.

Federal offenses—

Government property, malicious mischief, see section 1301 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.

## § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 910 (a) | 50: 704 (a). | May 5, 1950, ch. 169, § 1 (Art. 110), 64 Stat. 139. |
| 910 (b) | 50: 704 (b). | |

CROSS REFERENCES

Article to be explained, see 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, 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) |
|---|---|---|
| 911 | 50: 705. | May 5, 1950, ch. 169, § 1 (Art. 111), 64 Stat. 139. |

CROSS REFERENCES

Article to be explained, see 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.
Plea of guilty, prohibition against reception, see section 845 (b) 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 fact 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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-injury;

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) |
|---|---|---|
| 915 | 50: 709. | May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139. |

CROSS REFERENCES

Article to be explained, see 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.

### § 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.

### § 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.

Killing while engaged in other crime as manslaughter, see section 919 of this title.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Statute of limitations, see section 843 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 919 (a)<br>919 (b) | 50: 713 (a).<br>50: 713 (b). | May 5, 1950, ch. 169, § 1 (Art. 119), 64 Stat. 140. |

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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 920 (a)<br>920 (b)<br>920 (c) | 50: 714 (a).<br>50: 714 (b).<br>50: 714 (c). | May 5, 1950, ch. 169, § 1 (Art. 120), 64 Stat. 140. |

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 offense, see sections 2031, 2032 of Title 18, Crimes and Criminal Procedure.

Plea of guilty, prohibition against reception, see section 845 (b) of this title.

Statute of limitations, see section 843 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

## § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

## § 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 AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 offense 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.

## § 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

| Revised section | Source (U S. Code) | Source (Statutes at Large) |
|---|---|---|
| 924 | 50: 718. | May 5, 1950, ch. 169, § 1 (Art. 124), 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.

## § 925. 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

## § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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

## § 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. 74.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 927 | 50: 721. | May 5, 1950, ch. 169, § 1 (Art. 127), 64 Stat. 141. |

The words "of any description" 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 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 843 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

## § 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.

## § 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.

## § 931. Art. 131. Perjury.

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony 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.)

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".

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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 281 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

**§ 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 934 | 50: 728. | 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.

## 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

Law officer 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 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, and by other persons subject to this chapter outside of the United States:

(1) All judge advocates of the Army and the Air Force.

(2) All law specialists.

(3) All summary courts-martial.

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(5) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(7) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty may administer oaths necessary in the performance of their duties:

(1) The president, law officer, 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.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 (1) 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".

### § 937. Art. 137. Articles to be explained.

Sections 802, 803, 807—815, 825, 827, 831, 837, 838, 855, 877—934, and 937—939 (articles 2, 3, 7—15, 25,

27, 31, 37, 38, 55, 77—134, and 137—139) of this chapter shall be carefully explained to each enlisted member at the time of his entrance on active duty, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time when he reenlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty, upon his request, for his personal examination. (Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the text, is classified to this chapter.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

### § 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

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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.

### § 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, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U. S. Code) | Source (Statutes at Large) |
|---|---|---|
| 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 49.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman.
972. Enlisted members: required to make up time lost.

AMENDMENTS

1958—Pub. L. 85-861, § 1 (20), Sept. 2, 1958, 72 Stat. 1442, amended chapter by adding items 971 and 972.