

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

1962—Subsec. (a). Pub. L. 87-648 redesignated former subsec. (b) as (a), inserted references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary's regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

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

Subsec. (c). Pub. L. 87-648 substituted "under subsection (b)(2)(A)-(G) as the Secretary concerned may specifically prescribe by regulation" for "to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b)," and deleted "for minor offenses" after "an officer in charge may".

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

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

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

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

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

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

§ 816. Art. 16. Courts-martial classified

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

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a); or

(B) only a military judge, if before the court is assembled the accused, knowing the

identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

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

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Pub. L. 90-632, §2(3), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98-209, §3(a), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107-107, div. A, title V, §582(a), Dec. 28, 2001, 115 Stat. 1124.)

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.

AMENDMENTS

2001—Par. (1)(A). Pub. L. 107-107 inserted “or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a)” after “five members”.

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

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

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §582(d), Dec. 28, 2001, 115 Stat. 1125, provided that: “The amendments made by this section [enacting section 825a of this title and amending this section and section 829 of this title] shall apply with respect to offenses committed after December 31, 2002.”

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 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.

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

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

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

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.

AMENDMENTS

1968—Pub. L. 90-632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.