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''.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–81, § 542(b), substituted ''subpoenaed'' for ''subpenaed'' in two places.

Subsec. (a)(1). Pub. L. 112–81, § 542(a)(1)(A), substituted ''board, or has been duly issued a subpoena duces tecum for an investigation pursuant to section 832(b) of this title (article 32(b));'' for ''board;''.

Subsec. (a)(2). Pub. L. 112–81, § 542(a)(1)(B), substituted ''provided a means for reimbursement from the Government for fees and mileage'' for ''duly paid or tendered the fees and mileage of a witness'' and inserted ''or, in the case of extraordinary hardship, is advanced such fees and mileage'' before semicolon.

Subsec. (c). Pub. L. 112–81, § 542(a)(2), substituted ''board, or convening authority'' for ''or board''.

2006—Subsec. (b). Pub. L. 109–163 substituted ''Commonwealths or possessions'' for ''Territories, Commonwealths, or possessions''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''indictment or'' after ''shall be tried on'' and substituted ''shall be fined or imprisoned, or both, at the court's discretion'' for ''shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–81, div. A, title V, § 542(c), Dec. 31, 2011, 125 Stat. 1411, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to subpoenas issued after the date of the enactment of this Act [Dec. 31, 2011].''

§ 848. Art. 48. Contempts

(a) AUTHORITY TO PUNISH CONTEMPT.—A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of $1,000, or both.

(c) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111–383, div. A, title V, § 542(a), Jan. 7, 2011, 124 Stat. 4218.)

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''.

AMENDMENTS

2011—Pub. L. 111–383 amended section generally. Prior to amendment, text read as follows: ''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. This section does not apply to a military commission established under chapter 47A of this title.''

2006—Pub. L. 109–366 inserted last sentence.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title V, § 542(b), Jan. 7, 2011, 124 Stat. 4218, provided that: ''Section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to acts of contempt committed after the date of the enactment of this Act [Jan. 7, 2011].''

§ 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 the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

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

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

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

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

dered to sit, or beyond 100 miles from the place of trial or hearing;

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

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

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

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 90–632, §2(20), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98–209, §6(b), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 109–163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

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.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

1983—Subsecs. (d), (f). Pub. L. 98–209 inserted ''or, in the case of audiotape, videotape, or similar material, may be played in evidence'' after ''read in evidence''.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

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

§ 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. This section does not apply to a military commission established under chapter 47A of this title.

(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; Pub. L. 109–366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

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.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–366 inserted last sentence.

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.