

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
872(c) .....	50:659(c).	

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

In subsection (b), the words “be effective \* \* \* 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 two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused’s case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90-632, §2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
873 .....	50:660.	May 5, 1950, ch. 169, §1 (Art. 73), 64 Stat. 132.

The words “the ground” are substituted for the word “grounds”. The words “as the case may be” are substituted for the word “respectively”, since the prescribed action is alternative, not distributive.

AMENDMENTS

1994—Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” and “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1968—Pub. L. 90-632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90-632, set out as a note under section 801 of this title.

**§ 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. However, in the case of a sentence of confinement

for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(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; Pub. L. 106-398, §1 [[div. A], title V, §553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125; Pub. L. 107-107, div. A, title X, §1048(a)(8), Dec. 28, 2001, 115 Stat. 1223.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
874(a) .....	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b) .....	50:661(b).	

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

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107 inserted “that is adjudged for an offense committed after October 29, 2000” after “a sentence of confinement for life without eligibility for parole”.

2000—Subsec. (a). Pub. L. 106-398 inserted at end “However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125, provided that: “The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000].”

**§ 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