

to the limited purposes of the hearing, as provided for in paragraph (4) and subsection (a)(2).

(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing.

(4) The presentation of evidence and examination (including cross-examination) of witnesses at a preliminary hearing shall be limited to the matters relevant to the limited purposes of the hearing, as provided in subsection (a)(2).

(e) Recording of Preliminary Hearing.—A preliminary hearing under subsection (a) shall be recorded by a suitable recording device. The victim may request the recording and shall have access to the recording as prescribed by the Manual for Courts-Martial.

(f) Effect of Evidence of Uncharged Offense.—If evidence adduced in a preliminary hearing under subsection (a) indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused—

- (1) is present at the preliminary hearing;
- (2) is informed of the nature of each uncharged offense considered; and
- (3) is afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (d).

(g) Effect of Violation.—The requirements of this section are binding on all persons administering this chapter, but failure to follow the requirements does not constitute jurisdictional error.

(h) Victim Defined.—In this section, the term “victim” means a person who—

- (1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and
  - (2) is named in one of the specifications.
- See 2013 Amendment note below.

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”.

AMENDMENTS

2013—Pub. L. 113-66 substituted “Preliminary hearing” for “Investigation” in section catchline and amended text generally. Prior to amendment, section provided that no charge or specification may be referred to general court-martial for trial until thorough and impartial investigation of all the matters had been made.

1996—Subsecs. (d), (e). Pub. L. 104-106 added subsec. (d) and redesignated former subsec. (d) as (e).

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

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113-66 effective one year after Dec. 26, 2013, and applicable with respect to offenses committed under this chapter on or after that effective date, see section 1702(d)(1) of Pub. L. 113-66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

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

§ 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 for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

- (1) the specification alleges an offense under this chapter;
- (2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and
- (3) a court-martial would have jurisdiction over the accused and the offense.

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

- (1) expressing his conclusions with respect to each matter set forth in subsection (a); and
- (2) recommending action that the convening authority take regarding the specification.