

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.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) 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; Pub. L. 98-209, §4, Dec. 6, 1983, 97 Stat. 1395; Pub. L. 113-66, div. A, title XVII, §1702(c)(3)(B), Dec. 26, 2013, 127 Stat. 957.)

AMENDMENT OF SUBSECTION (a)(2)

*Pub. L. 113-66, div. A, title XVII, §1702(c)(3)(B), (d)(1), Dec. 26, 2013, 127 Stat. 957, 958, provided that, effective one year after Dec. 26, 2013, and applicable with respect to offenses committed under this chapter on or after that effective date, subsection (a)(2) of this section is amended by striking “investigation under section 832 of this title (article 32) (if there is such a report)” and inserting “a preliminary hearing under section 832 of this title (article 32)”. See 2013 Amendment note below.*

HISTORICAL AND REVISION NOTES

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

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

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 113-66 substituted “a preliminary hearing under section 832 of this title (article 32)” for “investigation under section 832 of this title (article 32) (if there is such a report)”.

1983—Subsec. (a). Pub. L. 98-209, §4(a), substituted “judge advocate” for “judge advocate or legal officer”, and provisions that 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 the specification alleges an offense under this chapter, 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 a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98-209, §4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

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 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and 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), (3) of Pub. L. 98-209, set out as a note under section 801 of this title.

REVIEW OF DECISIONS NOT TO REFER CHARGES OF CERTAIN SEX-RELATED OFFENSES FOR TRIAL BY COURT-MARTIAL

Pub. L. 113-66, div. A, title XVII, §1744, Dec. 26, 2013, 127 Stat. 980, provided that:

“(a) REVIEW REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense shall require the Secretaries of the military departments to provide for review of decisions not to refer charges for trial by court-martial in cases where a sex-related offense has been alleged by a victim of the alleged offense.

“(2) SPECIFIC REVIEW REQUIREMENTS.—As part of a review conducted pursuant to paragraph (1), the Secretary of a military department shall require that—

“(A) consideration be given to the victim’s statement provided during the course of the criminal investigation regarding the alleged sex-related offense perpetrated against the victim; and

“(B) a determination be made whether the victim’s statement and views concerning disposition of the alleged sex-related offense were considered by the convening authority in making the referral decision.

“(b) SEX-RELATED OFFENSE DEFINED.—In this section, the term ‘sex-related offense’ means any of the following:

“(1) Rape or sexual assault under subsection (a) or (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice).

“(2) Forcible sodomy under section 925 of such title (article 125 of the Uniform Code of Military Justice).

“(3) An attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).

“(c) REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION OF REFERRAL FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file to the Secretary of the military department concerned for review as a superior authorized to exercise general court-martial convening authority.

“(d) REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION NOT TO REFER FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense should not be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file for review to the next superior commander authorized to exercise general court-martial convening authority.

“(e) ELEMENTS OF CASE FILE.—A case file forwarded to higher authority for review pursuant to subsection (c) or (d) shall include the following:

“(1) All charges and specifications preferred under section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice).

“(2) All reports of investigations of such charges, including the military criminal investigative organization investigation report and the report prepared under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), as amended by section 1702.

“(3) A certification that the victim of the alleged sex-related offense was notified of the opportunity to express views on the victim’s preferred disposition of the alleged offense for consideration by the convening authority.

“(4) All statements of the victim provided to the military criminal investigative organization and to the victim’s chain of command relating to the alleged sex-related offense and any statement provided by the victim to the convening authority expressing the victim’s view on the victim’s preferred disposition of the alleged offense.

“(5) The written advice of the staff judge advocate to the convening authority pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice).

“(6) A written statement explaining the reasons for the convening authority’s decision not to refer any charges for trial by court-martial.

“(7) A certification that the victim of the alleged sex-related offense was informed of the convening authority’s decision to forward the case as provided in subsection (c) or (d).

“(f) NOTICE ON RESULTS OR REVIEW.—The victim of the alleged sex-related offense shall be notified of the results of the review conducted under subsection (c) or (d) in the manner prescribed by the victims and witness assistance program of the Armed Force concerned.

“(g) VICTIM ALLEGATION OF SEX-RELATED OFFENSE.—The Secretary of Defense shall require the Secretaries of the military departments to develop a system to ensure that a victim of a possible sex-related offense under the Uniform Code of Military Justice is given the opportunity to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether or not the victim believes that the offense alleged is a sex-related offense subject to the requirements of this section.”

**§ 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, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90-632, §2(12), Oct. 24, 1968, 82 Stat. 1337.)

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”.

AMENDMENTS

1968—Pub. L. 90-632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

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.

SUBCHAPTER VII—TRIAL PROCEDURE

| Sec. | Art.                               |
|------|------------------------------------|
| 836. | 36. President may prescribe rules. |

| Sec.  | Art.  |
|-------|---|
| 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.      |
| 850a. | 50a. Defense of lack of mental responsibility.          |
| 851.  | 51. Voting and rulings.                                 |
| 852.  | 52. Number of votes required.                           |
| 853.  | 53. Court to announce action.                           |
| 854.  | 54. Record of trial.                                    |

AMENDMENTS

1986—Pub. L. 99-661, div. A, title VIII, §802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a.

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

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, 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, except as provided in chapter 47A of this title, be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable, except insofar as applicable to military commissions established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 96-107, title VIII, §801(b), Nov. 9, 1979, 93 Stat. 811; Pub. L. 101-510, div. A, title XIII, §1301(4), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109-366, §4(a)(3), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                        |
|-----------------|--------------------|---|
| 836(a) .....    | 50:611(a).         | May 5, 1950, ch. 169, §1 (Art. 36), 64 Stat. 120. |
| 836(b) .....    | 50:611(b).         |   |

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”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-366, §4(a)(3)(A), inserted “, except as provided in chapter 47A of this title,” after “but which may not”.

Subsec. (b). Pub. L. 109-366, §4(a)(3)(B), inserted before period at end “, except insofar as applicable to military commissions established under chapter 47A of this title”.

1990—Subsec. (b). Pub. L. 101-510 struck out “and shall be reported to Congress” after “as practicable”.

1979—Subsec. (a). Pub. L. 96-107 substituted provisions authorizing pretrial, trial, and post-trial proce-