

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
851(a)	50:626(a).	May 5, 1950, ch. 169, §1 (Art. 51), 64 Stat. 124.
851(b)	50:626(b).	
851(c)	50:626(c).	

In subsection (a), the words "in each case" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be" in the second sentence. The word "constitutes" is substituted for the words "shall constitute". The word "However," is substituted for the word "but". The word "his" is substituted for the words "any such". The words "the ruling is" are substituted for the words "such ruling be". The words "voice vote" are substituted for the words "vote * * * viva voce".

In subsection (c), the word "must" is substituted for the word "shall" in clause (2), since a condition is prescribed, not a command. The words "United States" are substituted for the word "Government".

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-632, §2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90-632, §2(21)(B), substituted "military judge" for "law officer" and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90-632, §2(21)(C), substituted "military judge" for "law officer" and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90-632, §2(21)(D), added subsec. (d).

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.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not

opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90-632, §2(22), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
852(a)	50:627(a).	May 5, 1950, ch. 169, §1 (Art. 52), 64 Stat. 125.
852(b)	50:627(b).	
852(c)	50:627(c).	

In subsections (a) and (b), the word "may" is substituted for the word "shall".

In subsection (b)(2), the words "for more than" are substituted for the words "in excess of".

In subsection (c), the word "disqualifies" is substituted for the words "shall disqualify". The word "is" is substituted for the words "shall be" in the last two sentences.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90-632, §2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90-632, §2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

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.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
853	50:628.	May 5, 1950, ch. 169, §1 (Art. 53), 64 Stat. 125.

The word "A" is substituted for the word "Every".

§ 854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same con-

ditions which would impose such a duty on a member under this subsection.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(e) In the case of a general or special court-martial involving a sexual assault or other offense covered by section 920 of this title (article 120), a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90-632, §2(23), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98-209, §6(c), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 106-398, §1 [[div. A], title V, §555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127; Pub. L. 112-81, div. A, title V, §586(e), Dec. 31, 2011, 125 Stat. 1435.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
854(a)	50:629(a).	May 5, 1950, ch. 169, §1 (Art. 54), 64 Stat. 125.
854(b)	50:629(b).	
854(c)	50:629(c).	

In subsection (a), the word “If” is substituted for the words “In case”. The words “any of those” are substituted for the word “such” in the last sentence.

In subsection (b), the words “and the” are substituted for the word “which” before the word “record”. The words “the matter and shall be authenticated in the manner required by such regulations as” are substituted for the words “such matter and be authenticated in such manner as may be required by regulations which”.

In subsection (c), the words “it is” are inserted before the word “authenticated”.

AMENDMENTS

2011—Subsec. (e), Pub. L. 112-81 added subsec. (e).
2000—Subsec. (c)(1)(B), Pub. L. 106-398 inserted “, confinement for more than six months, or forfeiture of pay for more than six months” after “bad-conduct discharge”.

1983—Subsec. (a), Pub. L. 98-209, §6(c)(1), struck out provision that if the proceedings had resulted in an ac-

quittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b), Pub. L. 98-209, §6(c)(2), substituted “the record” for “the record shall contain the matter and”.

Subsecs. (c), (d), Pub. L. 98-209, §6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a), Pub. L. 90-632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §555(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as of April 1, 2000, and shall apply with respect to charges referred on or after that date to trial by special court-martial.”

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 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.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Maximum limits.
856a.	56a.	Sentence of confinement for life without eligibility for parole.
857.	57.	Effective date of sentences.
857a.	57a.	Deferment of sentences.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade upon approval.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

AMENDMENT OF ANALYSIS

Pub. L. 113-66, div. A, title XVII, §1705(a)(2)(B), (c), Dec. 26, 2013, 127 Stat. 959, 960, provided that, effective 180 days after Dec. 26, 2013, and applicable to offenses specified in section 856(b)(2) of this title committed on or after that date, this analysis is amended by striking the item relating to section 856 and inserting the following new item:

Art.	
856.	56. Maximum and minimum limits.

See 2013 Amendment note below.

AMENDMENTS

2013—Pub. L. 113-66, div. A, title XVII, §1705(a)(2)(B), Dec. 26, 2013, 127 Stat. 959, substituted “Maximum and minimum limits” for “Maximum limits” in item 856.