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| Sec.  | Art. |  |
| 866.  | 66.  | Review by Court of Criminal Appeals.   |
| 867.  | 67.  | Review by the Court of Appeals for the Armed Forces.   |
| 867a. | 67a. | Review by the Supreme Court.   |
| 868.  | 68.  | Branch offices.  |
| 869.  | 69.  | Review in the office of the Judge Advocate General.  |
| 870.  | 70.  | Appellate counsel.   |
| 871.  | 71.  | Execution of sentence; suspension of sentence.   |
| 872.  | 72.  | Vacation of suspension.  |
| 873.  | 73.  | Petition for a new trial.  |
| 874.  | 74.  | Remission and suspension.  |
| 875.  | 75.  | Restoration.   |
| 876.  | 76.  | Finality of proceedings, findings, and sentences.  |
| 876a. | 76a. | Leave required to be taken pending review of certain court-martial convictions.                        |
| 876b. | 76b. | Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment. |

## AMENDMENTS

1996—Pub. L. 104-106, div. A, title XI, §1133(a)(2), Feb. 10, 1996, 110 Stat. 466, added item 876b.

1994—Pub. L. 103-337, div. A, title IX, §924(c)(4)(C), Oct. 5, 1994, 108 Stat. 2832, substituted “Court of Criminal Appeals” for “Court of Military Review” in item 866 and “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in item 867.

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(1), Nov. 5, 1990, 104 Stat. 1718, added item 867a.

1983—Pub. L. 98-209, §§5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400-1402, substituted “Post-trial Procedure and Review of Courts-Martial” for “Review of Courts-Martial” as subchapter heading, “Action by the convening authority” for “Initial action on the record” in item 860, “Waiver or withdrawal of appeal” for “Same—General court-martial records” in item 861, “Appeal by the United States” for “Reconsideration and revision” in item 862, “Review by a judge advocate” for “Approval by the convening authority” in item 864, and “Disposition of records” for “Disposition of records after review by the convening authority” in item 865.

1981—Pub. L. 97-81, §2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 876a.

1968—Pub. L. 90-632, §2(25), Oct. 24, 1968, 82 Stat. 1341, substituted “Court of Military Review” for “board of review” in item 866 (article 66).

**§ 859. Art. 59. Error of law; lesser included offense**

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

## HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------|
| 859(a) .....    | 50:646(a).         | May 5, 1950, ch. 169, §1   |
| 859(b) .....    | 50:646(b).         | (Art. 59), 64 Stat. 127.   |

The word “may” is substituted for the word “shall”.

**§ 860. Art. 60. Action by the convening authority**

(a) The findings and sentence of a court-martial shall be reported promptly to the convening

authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (e). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or another person authorized to act under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(5) The convening authority or other person taking action under this section shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

(c)(1) Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2)(A) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

(B) Except as provided in paragraph (4), the convening authority or another person authorized to act under this section may approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part.

(C) If the convening authority or another person authorized to act under this section acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense (other than a qualifying offense), the convening authority or other person shall provide, at that same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of the trial and action thereon.