

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
831(a)	50:602(a).	May 5, 1950, ch. 169, § 1 (Art 31), 64 Stat. 118.
831(b)	50:602(b).	
831(c)	50:602(c).	
831(d)	50:602(d).	

The word “may” is substituted for the word “shall” throughout the revised section.

§ 832. Art. 32. Preliminary hearing

(a) PRELIMINARY HEARING REQUIRED.—(1) No charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing, unless such hearing is waived by the accused.

(2) The purpose of the preliminary hearing shall be limited to the following:

(A) Determining whether there is probable cause to believe an offense has been committed and the accused committed the offense.

(B) Determining whether the convening authority has court-martial jurisdiction over the offense and the accused.

(C) Considering the form of charges.

(D) Recommending the disposition that should be made of the case.

(b) HEARING OFFICER.—(1) A preliminary hearing under subsection (a) shall be conducted by an impartial judge advocate certified under section 827(b) of this title (article 27(b)) whenever practicable or, in exceptional circumstances in which the interests of justice warrant, by an impartial hearing officer who is not a judge advocate. If the hearing officer is not a judge advocate, a judge advocate certified under section 827(b) of this title (article 27(b)) shall be available to provide legal advice to the hearing officer.

(2) Whenever practicable, when the judge advocate or other hearing officer is detailed to conduct the preliminary hearing, the officer shall be equal to or senior in grade to military counsel detailed to represent the accused or the Government at the preliminary hearing.

(c) REPORT OF RESULTS.—After conducting a preliminary hearing under subsection (a), the judge advocate or other officer conducting the preliminary hearing shall prepare a report that addresses the matters specified in subsections (a)(2) and (f).

(d) RIGHTS OF ACCUSED AND VICTIM.—(1) The accused shall be advised of the charges against the accused and of the accused’s right to be represented by counsel at the preliminary hearing under subsection (a). The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence in defense and mitigation, relevant 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Pub. L. 97–81, §4(a), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 104–106, div. A, title XI, §1131, Feb. 10, 1996, 110 Stat. 464; Pub. L. 113–66, div. A, title XVII, §1702(a)(1), Dec. 26, 2013, 127 Stat. 954; Pub. L. 113–291, div. A, title V, §531(a)(4)(A), Dec. 19, 2014, 128 Stat. 3363.)

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

2014—Subsec. (a)(1). Pub. L. 113-291 inserted “, unless such hearing is waived by the accused” after “preliminary hearing”.

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 on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted 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 a preliminary

hearing 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; Pub. L. 113-291, div. A, title V, §531(a)(4)(B), Dec. 19, 2014, 128 Stat. 3363.)

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

2014—Subsec. (a)(2). Pub. L. 113-291 inserted “(if there is such a report)” after “(article 32)”.

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 on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted 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