

(b) The omission of the words “hard labor” from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 109-163, div. A, title X, §1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
858(a)	50:639(a).	May 5, 1950, ch. 169, §1
858(b)	50:639(b).	(Art. 58), 64 Stat. 126.

In subsection (a), the words “Secretary concerned” are substituted for the words “Department concerned”, since the “Department” as an entity, cannot issue instructions. The word “are” is substituted for the words “shall be”. The words “of Columbia” are inserted after “District” for clarity.

In subsection (b), the word “from” is substituted for the word “in”. The words “does not deprive” are substituted for the words “shall not be construed as depriving”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163 struck out “Territory,” after “State.”.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes—

- (1) a dishonorable or bad-conduct discharge;
- (2) confinement; or
- (3) hard labor without confinement;

reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86-633, §1(1), July 12, 1960, 74 Stat. 468.)

§ 858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857(a) of this title (article 57(a)) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

(A) confinement for more than six months or death; or

(B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860 of this title (article 60) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

(Added Pub. L. 104-106, div. A, title XI, §1122(a)(1), Feb. 10, 1996, 110 Stat. 463; amended Pub. L. 104-201, div. A, title X, §1068(a)(1), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105-85, div. A, title X, §1073(a)(9), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-85 substituted “forfeiture of pay, or of pay and allowances, due that member” for “forfeiture of pay and (if adjudged by a general court-martial) allowances due that member” in first sentence.

1996—Subsec. (a)(1). Pub. L. 104-201, §1068(a)(1)(B), substituted “two-thirds of all pay” for “two-thirds of all pay and allowances” in third sentence.

Pub. L. 104-201, §1068(a)(1)(A), which directed amendment of first sentence by inserting “(if adjudged by a general court-martial)” after “all pay and”, was executed by making the insertion after “of pay and” in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-201, div. A, title X, §1068(a)(2), Sept. 23, 1996, 110 Stat. 2655, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect as of April 1, 1996, and shall apply to any case in which a sentence is adjudged by a court-martial on or after that date.”

EFFECTIVE DATE

Pub. L. 104-106, div. A, title XI, §1122(b), Feb. 10, 1996, 110 Stat. 463, provided that: “The section (article) added by the amendment made by subsection (a)(1) [this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].”

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.	
859.	59.	Error of law; lesser included offense.
860.	60.	Action by the convening authority.
861.	61.	Waiver or withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Review by a judge advocate.
865.	65.	Disposition of records.