

Pub. L. 90-632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any non-capital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year. A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, §2(5), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 106-65, div. A, title V, §577(a), Oct. 5, 1999, 113 Stat. 625; Pub. L. 107-107, div. A, title X, §1048(g)(4), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 114-328, div. E, title LIV, §5163, Dec. 23, 2016, 130 Stat. 2898.)

AMENDMENT OF SECTION

Pub. L. 114-328, div. E, title LIV, §5163, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2898, 2967, made amendments to this section effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations. After such effective date, this section will read as follows:

§ 819. Art. 19. Jurisdiction of special courts-martial

(a) **IN GENERAL.**—Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three

months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

(b) **ADDITIONAL LIMITATION.**—Neither a bad-conduct discharge, nor confinement for more than six months, nor forfeiture of pay for more than six months may be adjudged if charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)).

(c) **MILITARY MAGISTRATE.**—If charges and specifications are referred to a special court-martial consisting of a military judge alone under section 816(c)(2)(A) of this title (article 16(c)(2)(A)), the military judge, with the consent of the parties, may designate a military magistrate to preside over the special court-martial.

See 2016 Amendment note below.

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
819	50:579.	May 5, 1950, ch. 169, §1 (Art. 19), 64 Stat. 114.

The word “shall” in the first sentence is omitted as surplusage. The words “for more than” are substituted for the words “in excess of”. The words “more than” are substituted for the words “a period exceeding”. The word “may” is substituted for the word “shall” in the last sentence.

AMENDMENTS

2016—Pub. L. 114-328 designated existing provisions as subsec. (a) and inserted heading, struck out “A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.” after “one year.”, and added subsecs. (b) and (c).

2001—Pub. L. 107-107, §1048(g)(4), amended directory language of Pub. L. 106-65, §577(a)(2). See 1999 Amendment note below.

1999—Pub. L. 106-65, §577(a)(2), as amended by Pub. L. 107-107, §1048(g)(4), inserted “, confinement for more than six months, or forfeiture of pay for more than six months” after “A bad-conduct discharge” in third sentence.

Pub. L. 106-65, §577(a)(1), substituted “one year” for “six months” in two places in second sentence.

1968—Pub. L. 90-632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations pre-

scribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title X, § 1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(4) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106-65 as enacted.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title V, § 577(b), Oct. 5, 1999, 113 Stat. 625, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act [Oct. 5, 1999] and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial."

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.

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, § 2(6), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 114-328, div. E, title LIV, § 5164, Dec. 23, 2016, 130 Stat. 2899.)

AMENDMENT OF SECTION

Pub. L. 114-328, div. E, title LIV, § 5164, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2899, 2967, provided that, effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, this section is amended:

(1) by inserting "(a) In General.—" before "Subject to"; and

(2) by adding at the end the following new subsection:

(b) Non-criminal Forum.—A summary court-martial is a non-criminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.

See 2016 Amendment note below.

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 820, 50:580, May 5, 1950, ch. 169, § 1 (Art. 20), 64 Stat. 114.

The word "shall" in the first sentence is omitted as surplusage. The word "may" is substituted for the word "shall" in the second sentence. The words "the provisions of" are omitted as surplusage. The word "IF" is substituted for the word "Where". The words "for more than" are substituted for the words "in excess of". The words "more than" are substituted for the words "pay in excess of".

AMENDMENTS

2016—Pub. L. 114-328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1968—Pub. L. 90-632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328, 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.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 109-366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 821, 50:581, May 5, 1950, ch. 169, § 1 (Art. 21), 64 Stat. 115.

The words "do not deprive" are substituted for the words "shall not be construed as depriving". The words "with respect to" are substituted for the words "in respect of".

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Table with 2 columns: Sec., Art. Row 1: 822., 22. Who may convene general courts-martial.