

a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

- (1) order that the subpoena or other process be modified or withdrawn, as appropriate; or
- (2) order the person to comply with the subpoena or other process.

*See 2016 Amendment notes below.*

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
846 .....	50:621.	May 5, 1950, ch. 169, §1 (Art. 46), 64 Stat. 122.

The word “Commonwealths” is inserted to reflect the present status of Puerto Rico.

AMENDMENTS

2016—Pub. L. 114-328, §5228(a)(5), amended section catchline generally, substituting “Opportunity to obtain witnesses and other evidence in trials by court-martial” for “Opportunity to obtain witnesses and other evidence”.

Subsec. (a). Pub. L. 114-328, §5228(a)(1), substituted “In a case referred for trial by court-martial, the trial counsel, the defense counsel,” for “The counsel for the Government, the counsel for the accused.”.

Subsec. (b). Pub. L. 114-328, §5228(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to request by counsel for accused to interview the victim of an alleged sex-related offense.

Subsec. (c). Pub. L. 114-328, §5228(a)(3), amended subsec. (c) generally. Prior to amendment, text read as follows: “Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Commonwealths and possessions.”

Subsecs. (d), (e). Pub. L. 114-328, §5228(a)(4), added subsecs. (d) and (e).

2014—Subsec. (a). Pub. L. 113-291, §531(b)(2), (3)(B), substituted “counsel for the Government” for “trial counsel” and “counsel for the accused” for “defense counsel”.

Subsec. (b). Pub. L. 113-291, §531(b)(3)(A), which directed substitution of “COUNSEL FOR ACCUSED” for “DEFENSE COUNSEL” in heading of section, was executed by making the substitution in the heading of subsec. (b) to reflect the probable intent of Congress.

Pub. L. 113-291, §531(b)(2), (3)(B), substituted “counsel for the Government” for “trial counsel” and “counsel for the accused” for “defense counsel” wherever appearing.

Subsec. (b)(1). Pub. L. 113-291, §531(b)(1), substituted “through the Special Victims’ Counsel or other counsel for the victim, if applicable” for “through trial counsel”.

2013—Pub. L. 113-66 designated first sentence as subsec. (a) and second sentence as subsec. (c), inserted headings, and added subsec. (b).

2006—Pub. L. 109-163 substituted “Commonwealths and possessions” for “Territories, Commonwealths, and possessions”.

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 applicabil-

ity to various situations, see section 5542 of Pub. L. 114-328, set out as a note under section 801 of this title.

§ 847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board, or has been duly issued a subpoena duces tecum for a preliminary hearing pursuant to section 832 of this title (article 32);

(2) has been provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court’s discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, board, or convening authority, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 104-106, div. A, title XI, §1111, Feb. 10, 1996, 110 Stat. 461; Pub. L. 109-163, div. A, title X, §1057(a)(5), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 112-81, div. A, title V, §542(a), (b), Dec. 31, 2011, 125 Stat. 1411; Pub. L. 113-66, div. A, title XVII, §1702(c)(3)(D), Dec. 26, 2013, 127 Stat. 958; Pub. L. 114-328, div. E, title LVII, §5229, Dec. 23, 2016, 130 Stat. 2913.)

AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LVII, §5229, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2913, 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:*

§ 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence

(a) IN GENERAL.—(1) Any person described in paragraph (2) who—

- (A) willfully neglects or refuses to appear; or
- (B) willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce;

is guilty of an offense against the United States.

(2) The persons referred to in paragraph (1) are the following:

(A) Any person not subject to this chapter who—

(i) is issued a subpoena or other process described in subsection (c) of section 846 of this title (article 46); and

(ii) is provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage.

(B) Any person not subject to this chapter who is issued a subpoena or other process described in subsection (d) of section 846 of this title (article 46).

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, board, or convening authority, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

See 2016 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
847(a) .....	50:622(a).	May 5, 1950, ch. 169, § 1
847(b) .....	50:622(b).	(Art. 47), 64 Stat. 123.
847(c) .....	50:622(c).	
847(d) .....	50:622(d).	

In subsection (a), the word “Any” is substituted for the word “Every”. The word “is” is substituted for the words “shall be deemed”.

In subsection (b), the words “named in subsection (a)” are substituted for the words “denounced by this article”. The words “Territories, Commonwealths, or” are substituted for the word “Territorial”. The words “not more than” are substituted for the words “a period not exceeding”.

In subsection (c), the words “It shall be the duty of \* \* \* to” are omitted as surplusage. The words “United States Attorney” are substituted for the words “United States district attorney”, to conform to the terminology of section 501 of title 28. The word “shall” is inserted after the word “jurisdiction”.

AMENDMENTS

2016—Pub. L. 114-328, § 5229(b), amended section catchline generally, substituting “Refusal of person not subject to chapter to appear, testify, or produce evidence” for “Refusal to appear or testify”.

Subsec. (a). Pub. L. 114-328, § 5229(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any person not subject to this chapter who—

“(1) has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board, or has been duly issued a subpoena duces tecum for a preliminary hearing pursuant to section 832 of this title (article 32);

“(2) has been provided a means for reimbursement from the Government for fees and mileage at the rates allowed to witnesses attending the courts of the United States or, in the case of extraordinary hardship, is advanced such fees and mileage; and

“(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

is guilty of an offense against the United States.”

2013—Subsec. (a)(1). Pub. L. 113-66 substituted “a preliminary hearing pursuant to section 832 of this title (article 32)” for “an investigation pursuant to section 832(b) of this title (article 32(b))”.

2011—Subsec. (a). Pub. L. 112-81, § 542(b), substituted “subpoenaed” for “subpenaed” in two places.

Subsec. (a)(1). Pub. L. 112-81, § 542(a)(1)(A), substituted “board, or has been duly issued a subpoena duces tecum for an investigation pursuant to section 832(b) of this title (article 32(b));” for “board;”.

Subsec. (a)(2). Pub. L. 112-81, § 542(a)(1)(B), substituted “provided a means for reimbursement from the Government for fees and mileage” for “duly paid or tendered the fees and mileage of a witness” and inserted “or, in the case of extraordinary hardship, is advanced such fees and mileage” before semicolon.

Subsec. (c). Pub. L. 112-81, § 542(a)(2), substituted “board, or convening authority” for “or board”.

2006—Subsec. (b). Pub. L. 109-163 substituted “Commonwealths or possessions” for “Territories, Commonwealths, or possessions”.

1996—Subsec. (b). Pub. L. 104-106 inserted “indictment or” after “shall be tried on” and substituted “shall be fined or imprisoned, or both, at the court's discretion” for “shall be punished by a fine of not more than \$500, or imprisonment for not more than six months, or both”.

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 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 2011 AMENDMENT

Pub. L. 112-81, div. A, title V, § 542(c), Dec. 31, 2011, 125 Stat. 1411, provided that: “The amendments made by subsection (a) [amending this section] shall apply with

respect to subpoenas issued after the date of the enactment of this Act [Dec. 31, 2011].”

§ 848. Art. 48. Contempts

(a) AUTHORITY TO PUNISH CONTEMPT.—A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of \$1,000, or both.

(c) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111-383, div. A, title V, §542(a), Jan. 7, 2011, 124 Stat. 4218; Pub. L. 114-328, div. E, title LVII, §5230, Dec. 23, 2016, 130 Stat. 2913.)

AMENDMENT OF SECTION

Pub. L. 114-328, div. E, title LVII, §5230, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2913, 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:

§ 848. Art. 48. Contempt

(a) AUTHORITY TO PUNISH.—(1) With respect to any proceeding under this chapter, a judicial officer specified in paragraph (2) may punish for contempt any person who—

(A) uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding;

(B) disturbs the proceeding by any riot or disorder; or

(C) willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

(2) A judicial officer referred to in paragraph (1) is any of the following:

(A) Any judge of the Court of Appeals for the Armed Forces and any judge of a Court of Criminal Appeals under section 866 of this title (article 66).

(B) Any military judge detailed to a court-martial, a provost court, a military commission, or any other proceeding under this chapter.

(C) Any military magistrate designated to preside under section 819 of this title (article 19).

(D) The president of a court of inquiry.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of \$1,000, or both.

(c) REVIEW.—A punishment under this section—

(1) if imposed by a military judge or military magistrate, may be reviewed by the Court of Criminal Appeals in accordance with the uniform rules of procedure for the Courts of Criminal Appeals under section 866(g) of this title (article 66(g));

(2) if imposed by a judge of the Court of Appeals for the Armed Forces or a judge of a Court of Criminal Appeals, shall constitute a judgment of the court, subject to review under the applicable provisions of section 867 or 867a of this title (article 67 or 67a); and

(3) if imposed by a court of inquiry, shall be subject to review by the convening authority in accordance with rules prescribed by the President.

(d) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

See 2016 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
848 .....	50:623.	May 5, 1950, ch. 169, §1 (Art. 48), 64 Stat. 123.

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

AMENDMENTS

2016—Pub. L. 114-328, §5230(c), amended section catchline generally, substituting “Contempt” for “Contempts”.

Subsec. (a). Pub. L. 114-328, §5230(a), amended subsec. (a) generally. Prior to amendment, text read as follows: “A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

“(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

“(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

“(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.”

Subsecs. (c), (d). Pub. L. 114-328, §5230(b), added subsec. (c) and redesignated former subsec. (c) as (d).

2011—Pub. L. 111-383 amended section generally. Prior to amendment, text read as follows: “A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100, or both. This section does not apply to a military commission established under chapter 47A of this title.”

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

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-