

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90-632, §2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98-209, §5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 113-66, div. A, title XVII, §1702(c)(2), Dec. 26, 2013, 127 Stat. 957.)

#### REPEAL OF SECTION

*Pub. L. 114-328, div. E, title LVIII, §5302(b)(2), title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2923, 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than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, this section is repealed.*

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
871(a) .....	50:658(a).	May 5, 1950, ch. 169, §1 (Art. 71), 64 Stat. 131.
871(b) .....	50:658(b).	
871(c) .....	50:658(c).	
871(d) .....	50:658(d).	

In subsection (a), the word “may” is substituted for the word “shall”.

In subsection (b), the word “commissioned” is inserted for clarity. The word “may” is substituted for the word “shall” in the first sentence. The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The words “who is” are omitted as surplusage.

In subsection (c), the word “may” is substituted for the word “shall”.

#### AMENDMENTS

2013—Subsec. (d). Pub. L. 113-66 inserted at end “Paragraphs (2) and (4) of subsection (c) of section 860 of this title (article 60) shall apply to any decision by the convening authority or another person authorized to act under this section to suspend the execution of any sentence or part thereof under this subsection.”

1994—Subsec. (c)(1). Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” and “Court of Appeals for the Armed Forces” for “Court of Military Appeals” wherever appearing.

1983—Subsec. (a). Pub. L. 98-209, §5(e)(1), amended subsec. (a) generally, substituting provision that part of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98-209, §5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman, the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a general or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98-209, §5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read as

follows: “No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.”

Subsec. (d). Pub. L. 98-209, §5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: “All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.”

1968—Subsec. (c). Pub. L. 90-632, §2(32)(A), substituted “Court of Military Review” for “board of review”.

Subsec. (d). Pub. L. 90-632, §2(32)(B), inserted reference to deferred court-martial sentences.

#### EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 2016 Amendment note under section 801 of this title.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 113-66 effective 180 days after Dec. 26, 2013, and applicable with respect to offenses committed under this chapter on or after that effective date, with provision with respect to the findings and sentence of a court-martial that includes both a conviction for an offense committed before the effective date and a conviction for an offense committed on or after that effective date, see section 1702(d)(2) of Pub. L. 113-66, set out as a note under section 860 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 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendments 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.

### § 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspen-

sion of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114-328, div. E, title LIX, §5335, Dec. 23, 2016, 130 Stat. 2936.)

AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LIX, §5335, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2936, 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:*

§872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 857 of this title (article 57). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

*See 2016 Amendment notes below.*

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(a) .....	50:659(a).	May 5, 1950, ch. 169, §1
872(b) .....	50:659(b).	(Art. 72), 64 Stat. 131.
872(c) .....	50:659(c).	

In subsection (a), the word “Before” is substituted for the words “Prior to”.

In subsection (b), the words “be effective \* \* \* to” are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word “is” is substituted for the words “shall \* \* \* be” in the last sentence. The word “sent” is substituted for the word “forwarded”. The

words “Secretary concerned” are substituted for the words “Secretary of the Department”.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, §5335(a), (b)(1), inserted “The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing.” after first sentence and substituted “if the probationer so desires” for “if he so desires” in last sentence.

Subsec. (b). Pub. L. 114-328, §5335(b)(2), substituted “If the officer exercising general court-martial jurisdiction” for “If he” and “section 857 of this title (article 57)” for “section 871(c) of this title (article 71(c))”.

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.

§ 873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused’s case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90-632, §2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114-328, div. E, title LIX, §5336, Dec. 23, 2016, 130 Stat. 2937.)

AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LIX, §5336, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2937, 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 by striking “two years after approval by the convening authority of a court-martial sentence” and inserting “three years after the date of the entry of judgment under section 860c of this title (article 60c)”. See 2016 Amendment note below.*

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873 .....	50:660.	May 5, 1950, ch. 169, §1
		(Art. 73), 64 Stat. 132.

The words “the ground” are substituted for the word “grounds”. The words “as the case may be” are substituted for the word “respectively”, since the prescribed action is alternative, not distributive.

AMENDMENTS

2016—Pub. L. 114-328 substituted “three years after the date of the entry of judgment under section 860c of