

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

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97-81, set out as a note under section 706 of this title.

#### § 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to

the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added Pub. L. 104-106, div. A, title XI, § 1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)

#### EFFECTIVE DATE

Pub. L. 104-106, div. A, title XI, § 1133(c), Feb. 10, 1996, 110 Stat. 466, provided that: "Section 876b of title 10,

United States Code (article 76b of the Uniform Code of Military Justice), as added by subsection (a), shall take effect at the end of the six-month period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply with respect to charges referred to courts-martial after the end of that period.”

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.	
877.	77.	Principals.
878.	78.	Accessory after the fact.
879.	79.	Conviction of lesser included offense.
880.	80.	Attempts.
881.	81.	Conspiracy.
882.	82.	Solicitation.
883.	83.	Fraudulent enlistment, appointment, or separation.
884.	84.	Unlawful enlistment, appointment, or separation.
885.	85.	Desertion.
886.	86.	Absence without leave.
887.	87.	Missing movement.
888.	88.	Contempt toward officials.
889.	89.	Disrespect toward superior commissioned officer.
890.	90.	Assaulting or willfully disobeying superior commissioned officer.
891.	91.	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
892.	92.	Failure to obey order or regulation.
893.	93.	Cruelty and maltreatment.
894.	94.	Mutiny or sedition.
895.	95.	Resistance, flight, breach of arrest, and escape.
896.	96.	Releasing prisoner without proper authority.
897.	97.	Unlawful detention.
898.	98.	Noncompliance with procedural rules.
899.	99.	Misbehavior before the enemy.
900.	100.	Subordinate compelling surrender.
901.	101.	Improper use of countersign.
902.	102.	Forcing a safeguard.
903.	103.	Captured or abandoned property.
904.	104.	Aiding the enemy.
905.	105.	Misconduct as prisoner.
906.	106.	Spies.
906a.	106a.	Espionage.
907.	107.	False official statements.
908.	108.	Military property of United States—Loss, damage, destruction, or wrongful disposition.
909.	109.	Property other than military property of United States—Waste, spoilage, or destruction.
910.	110.	Improper hazarding of vessel.
911.	111.	Drunken or reckless operation of a vehicle, aircraft, or vessel.
912.	112.	Drunk on duty.
912a.	112a.	Wrongful use, possession, etc., of controlled substances.
913.	113.	Misbehavior of sentinel.
914.	114.	Dueling.
915.	115.	Malingering.
916.	116.	Riot or breach of peace.
917.	117.	Provoking speeches or gestures.
917a.	117a.	Wrongful broadcast or distribution of intimate visual images.
918.	118.	Murder.
919.	119.	Manslaughter.
919a.	119a.	Death or injury of an unborn child.
920.	120.	Rape and sexual assault generally.
920a.	120a.	Stalking.
920b.	120b.	Rape and sexual assault of a child.
920c.	120c.	Other sexual misconduct.
921.	121.	Larceny and wrongful appropriation.
922.	122.	Robbery.
923.	123.	Forgery.
923a.	123a.	Making, drawing, or uttering check, draft, or order without sufficient funds.

Sec.	Art.	
924.	124.	Maiming.
925.	125.	Forcible sodomy; bestiality.
926.	126.	Arson.
927.	127.	Extortion.
928.	128.	Assault.
929.	129.	Burglary.
930.	130.	Housebreaking.
931.	131.	Perjury.
932.	132.	Frauds against the United States.
933.	133.	Conduct unbecoming an officer and a gentleman.
934.	134.	General article.

AMENDMENTS

2017—Pub. L. 115–91, div. A, title X, §1081(d)(18), Dec. 12, 2017, 131 Stat. 1600, amended Pub. L. 114–328, §5452. See 2016 Amendment note below.

Pub. L. 115–91, div. A, title V, §533(b), Dec. 12, 2017, 131 Stat. 1390, added item 917a.

2016—Pub. L. 114–328, div. E, title LX, §5452, Dec. 23, 2016, 130 Stat. 2958, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(18), Dec. 12, 2017, 131 Stat. 1600, amended analysis generally, substituting items 877 to 934 for former items 877 to 934.

2013—Pub. L. 113–66, div. A, title XVII, §1707(b), Dec. 26, 2013, 127 Stat. 961, substituted “Forcible sodomy; bestiality” for “Sodomy” in item 925.

2011—Pub. L. 112–81, div. A, title V, §541(e), Dec. 31, 2011, 125 Stat. 1410, substituted “Rape and sexual assault generally” for “Rape, sexual assault, and other sexual misconduct” in item 920 and added items 920b and 920c.

2006—Pub. L. 109–163, div. A, title V, §552(a)(2), Jan. 6, 2006, 119 Stat. 3262, substituted “Rape, sexual assault, and other sexual misconduct” for “Rape and carnal knowledge” in item 920.

Pub. L. 109–163, div. A, title V, §551(a)(2), Jan. 6, 2006, 119 Stat. 3256, added item 920a.

2004—Pub. L. 108–212, §3(b), Apr. 1, 2004, 118 Stat. 570, added item 919a.

1997—Pub. L. 105–85, div. A, title X, §1073(a)(10), Nov. 18, 1997, 111 Stat. 1900, struck out “Art.” before “95” in item 895.

1996—Pub. L. 104–106, div. A, title XI, §1112(b), Feb. 10, 1996, 110 Stat. 461, inserted “flight,” after “Resistance,” in item 895.

1992—Pub. L. 102–484, div. A, title X, §1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted “operation of a vehicle, aircraft, or vessel” for “driving” in item 911.

1985—Pub. L. 99–145, title V, §534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98–209, §8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87–385, §1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

AMENDMENT OF ANALYSIS AND SUBCHAPTER

*Pub. L. 115–91, div. A, title X, §1081(d)(18), Dec. 12, 2017, 131 Stat. 1599, 1600, provided that, effective as of Dec. 23, 2016, and as if included within the amendment made by section 5452 of Pub. L. 114–328, set out below, as enacted, this analysis is amended in the item relating to section 887a, by striking “Resistance” and inserting “Resistance”, in the item relating to section 908, by striking “of the United States–Loss” and inserting “of United States–Loss,” in the item relating to section 909, by striking “of the” and inserting “of”, and in the item relating to section 909a, by striking the second period at the end. See 2017 Amendment note above.*

*Pub. L. 114–328, div. E, title LX, §§5401–5452, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2937–2958, 2967, as amended by Pub. L. 115–91, div. A, title X, §1081(d)(18), Dec. 12, 2017, 131 Stat. 1600, substantially reorganized and revised*