

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.

**§ 834. Art. 34. Advice of staff judge advocate and reference for trial**

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of a preliminary hearing under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 98-209, § 4, Dec. 6, 1983, 97 Stat. 1395; Pub. L. 113-66, div. A, title XVII, § 1702(c)(3)(B), Dec. 26, 2013, 127 Stat. 957; Pub. L. 113-291, div. A, title V, § 531(a)(4)(B), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114-328, div. E, title LVI, § 5205, Dec. 23, 2016, 130 Stat. 2907.)

AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LVI, § 5205, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2907, 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 to read as follows:*

**§ 834. Art. 34. Advice to convening authority before referral for trial**

(a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall pro-

vide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense.

(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(c) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

(1) to correct errors in form; and

(2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

(d) REFERRAL DEFINED.—In this section, the term “referral” means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.

*See 2016 Amendment note below.*

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
834(a) .....	50:605(a).	May 5, 1950, ch. 169, § 1
834(b) .....	50:605(b).	(Art. 34), 64 Stat. 119.

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

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to reference of charge to staff judge advocate for consideration and advice before trial, written and signed statement of advice by the staff judge advocate, and corrections to charges and specifications, respectively.

2014—Subsec. (a)(2). Pub. L. 113-291 inserted “(if there is such a report)” after “(article 32)”.

2013—Subsec. (a)(2). Pub. L. 113-66 substituted “a preliminary hearing under section 832 of this title (article 32)” for “investigation under section 832 of this title (article 32) (if there is such a report)”.

1983—Subsec. (a). Pub. L. 98-209, §4(a), substituted “judge advocate” for “judge advocate or legal officer”, and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98-209, §4(b), added subsec. (b) and redesignated former subsec. (b) as (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.

#### 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 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 charges were referred to trial before that date, and 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), (3) of Pub. L. 98-209, set out as a note under section 801 of this title.

#### REVIEW OF DECISIONS NOT TO REFER CHARGES OF CERTAIN SEX-RELATED OFFENSES FOR TRIAL BY COURT-MARTIAL

Pub. L. 113-66, div. A, title XVII, §1744, Dec. 26, 2013, 127 Stat. 980, as amended by Pub. L. 113-291, div. A, title V, §541, Dec. 19, 2014, 128 Stat. 3371, provided that:

##### “(a) REVIEW REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense shall require the Secretaries of the military departments to provide for review of decisions not to refer charges for trial by court-martial in cases where a sex-related offense has been alleged by a victim of the alleged offense.

“(2) SPECIFIC REVIEW REQUIREMENTS.—As part of a review conducted pursuant to paragraph (1), the Secretary of a military department shall require that—

“(A) consideration be given to the victim’s statement provided during the course of the criminal investigation regarding the alleged sex-related offense perpetrated against the victim; and

“(B) a determination be made whether the victim’s statement and views concerning disposition of the alleged sex-related offense were considered by the convening authority in making the referral decision.

“(b) SEX-RELATED OFFENSE DEFINED.—In this section, the term ‘sex-related offense’ means any of the following:

“(1) Rape or sexual assault under subsection (a) or (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice).

“(2) Forcible sodomy under section 925 of such title (article 125 of the Uniform Code of Military Justice).

“(3) An attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).

“(c) REVIEW OF CERTAIN CASES NOT REFERRED TO COURT-MARTIAL.—

“(1) CASES NOT REFERRED FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION FOR REFERRAL FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file to the Secretary of the military department concerned for review as a superior authorized to exercise general court-martial convening authority.

“(2) CASES NOT REFERRED BY CONVENING AUTHORITY UPON REQUEST FOR REVIEW BY CHIEF PROSECUTOR.—

“(A) IN GENERAL.—In any case where a convening authority decides not to refer a charge of a sex-related offense to trial by court-martial, the Secretary of the military department concerned shall review the decision as a superior authority authorized to exercise general court-martial convening authority if the chief prosecutor of the Armed Force concerned, in response to a request by the detailed counsel for the Government, requests review of the decision by the Secretary.

“(B) CHIEF PROSECUTOR DEFINED.—In this paragraph, the term ‘chief prosecutor’ means the chief prosecutor or equivalent position of an Armed Force, or, if an Armed Force does not have a chief prosecutor or equivalent position, such other trial counsel as shall be designated by the Judge Advocate General of that Armed Force, or in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps.

“(d) REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION NOT TO REFER FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense should not be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file for review to the next superior commander authorized to exercise general court-martial convening authority.

“(e) ELEMENTS OF CASE FILE.—A case file forwarded to higher authority for review pursuant to subsection (c) or (d) shall include the following:

“(1) All charges and specifications preferred under section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice).

“(2) All reports of investigations of such charges, including the military criminal investigative organization investigation report and the report prepared under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), as amended by section 1702.

“(3) A certification that the victim of the alleged sex-related offense was notified of the opportunity to express views on the victim’s preferred disposition of the alleged offense for consideration by the convening authority.

“(4) All statements of the victim provided to the military criminal investigative organization and to the victim’s chain of command relating to the alleged sex-related offense and any statement provided by the victim to the convening authority expressing the victim’s view on the victim’s preferred disposition of the alleged offense.

“(5) The written advice of the staff judge advocate to the convening authority pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice).

“(6) A written statement explaining the reasons for the convening authority’s decision not to refer any charges for trial by court-martial.

“(7) A certification that the victim of the alleged sex-related offense was informed of the convening authority’s decision to forward the case as provided in subsection (c) or (d).

“(f) NOTICE ON RESULTS OR REVIEW.—The victim of the alleged sex-related offense shall be notified of the results of the review conducted under subsection (c) or (d) in the manner prescribed by the victims and witness assistance program of the Armed Force concerned.

“(g) VICTIM ALLEGATION OF SEX-RELATED OFFENSE.—The Secretary of Defense shall require the Secretaries of the military departments to develop a system to ensure that a victim of a possible sex-related offense under the Uniform Code of Military Justice is given the opportunity to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether or not the victim believes that the offense alleged is a sex-related offense subject to the requirements of this section.”

**§ 835. Art. 35. Service of charges**

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90-632, §2(12), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 114-328, div. E, title LVI, §5206, Dec. 23, 2016, 130 Stat. 2908.)

AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LVI, §5206, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2908, 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 to read as follows:*

§ 835. Art. 35. Service of charges; commencement of trial

(a) IN GENERAL.—Trial counsel detailed for a court-martial under section 827 of this title (article 27) shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

(b) COMMENCEMENT OF TRIAL.—(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a))) may be held over the objection of the accused—

(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

*See 2016 Amendment note below.*

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
835 .....	50:606.	May 5, 1950, ch. 169, §1 (Art. 35), 64 Stat. 119.

The word “may” is substituted for the word “shall”. The word “after” is substituted for the words “subsequent to”.

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.”

1968—Pub. L. 90-632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

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.

SUBCHAPTER VII—TRIAL PROCEDURE

Sec.	Art.	
836.	36.	President may prescribe rules.
837.	37.	Unlawfully influencing action of court.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
841.	41.	Challenges.
842.	42.	Oaths.
843.	43.	Statute of limitations.
844.	44.	Former jeopardy.
845.	45.	Pleas of the accused.
846.	46.	Opportunity to obtain witnesses and other evidence.