

98–209, §3(e), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 113–66, div. A, title XVII, §1702(c)(3)(C), Dec. 26, 2013, 127 Stat. 957; Pub. L. 114–328, div. E, title LVII, §5221, Dec. 23, 2016, 130 Stat. 2909; Pub. L. 115–91, div. A, title V, §531(c), Dec. 12, 2017, 131 Stat. 1384.)

AMENDMENT OF SUBSECTION (c)(2)

Pub. L. 115–91, div. A, title V, §531(c), (p), Dec. 12, 2017, 131 Stat. 1384, 1388, provided that, effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), subsection (c)(2) of this section is amended by striking “section 860 of this title (article 60)” and inserting “section 860, 860a, or 860b of this title (article 60, 60a, or 60b)”. See 2017 Amendment note below.

AMENDMENT OF SUBSECTION (e)

Pub. L. 114–328, div. E, title LVII, §5221, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2909, 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, subsection (e) is amended by striking “, under the direction” and all that follows through “(article 27)”. See 2016 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
833(a) .....	50:613(a).	May 5, 1950, ch. 169, §1 (Art. 38), 64 Stat. 120.
833(b) .....	50:613(b).	
833(c) .....	50:613(c).	
833(d) .....	50:613(d).	
833(e) .....	50:613(e).	

In subsection (b), the word “has” is substituted for the words “shall have”. The word “under” is substituted for the words “pursuant to”. The word “duly” is omitted as surplusage. The words “detailed” and “who were detailed” are substituted for the word “appointed”, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word “considers” is substituted for the words “may deem”.

AMENDMENTS

2017—Subsec. (c)(2). Pub. L. 115–91 substituted “section 860, 860a, or 860b of this title (article 60, 60a, or 60b)” for “section 860 of this title (article 60)”.

2016—Subsec. (e). Pub. L. 114–328 struck out “, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27),” after “court-martial may”.

2013—Subsec. (b)(1). Pub. L. 113–66 substituted “a preliminary hearing under section 832” for “an investigation under section 832”.

1999—Subsec. (b)(7). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (b)(7). Pub. L. 104–106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

1983—Subsec. (b)(6). Pub. L. 98–209, §3(e)(1), substituted “the person authorized under regulations pre-

scribed under section 827 of this title (article 27) to detail counsel” for “a convening authority”.

Subsec. (b)(7). Pub. L. 98–209, §3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98–209, §3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981—Subsec. (b). Pub. L. 97–81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the “reasonable availability” of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968—Subsec. (b). Pub. L. 90–632 substituted “military judge or by the president of a court-martial without a military judge” for “president of the court”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115–91, set out as a note under section 801 of this title.

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 after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on 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.

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-

martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

(b) Proceedings under subsection (a) shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29). If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

(d) The findings, holdings, interpretations, and other precedents of military commissions under chapter 47A of this title—

(1) may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial under this chapter; and

(2) may not form the basis of any holding, decision, or other determination of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(15), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 101-510, div. A, title V, §541(a), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 109-163, div. A, title V, §556, Jan. 6, 2006, 119 Stat. 3266; Pub. L. 111-84, div. A, title XVIII, §1803(a)(2), Oct. 28, 2009, 123 Stat. 2612; Pub. L. 114-328, div. E, title LVII, §5222, Dec. 23, 2016, 130 Stat. 2909; Pub. L. 115-91, div. A, title X, §1081(c)(1)(D), Dec. 12, 2017, 131 Stat. 1598.)

#### AMENDMENT OF SUBSECTIONS (a) AND (c)

*Pub. L. 115-91, div. A, title X, §1081(c)(1)(D), (4), Dec. 12, 2017, 131 Stat. 1598, 1599, provided that, effective immediately after the amendment*

*made by section 5222 of Pub. L. 114-328, set out below, takes effect as provided for in section 5542 of that Act, subsection (a)(4) of this section is amended by striking “in non-capital cases unless the accused requests sentencing by members under section 825 of this title (article 25)” and inserting “under section 853(b)(1) of this title (article 53(b)(1))”. See 2017 Amendment note below.*

*Pub. L. 114-328, div. E, title LVII, §5222, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2909, 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 as follows:*

*(1) in subsection (a)—*

*(A) in paragraph (3)—*

*(i) by striking “if permitted by regulations of the Secretary concerned,”; and*

*(ii) by striking “and” at the end;*

*(B) by redesignating paragraph (4) as paragraph (5); and*

*(C) by inserting after paragraph (3) the following new paragraph (4):*

*“(4) conducting a sentencing proceeding and sentencing the accused in non-capital cases unless the accused requests sentencing by members under section 825 of this title (article 25); and”;*

*and*

*(2) in subsection (c), by striking “, in cases in which a military judge has been detailed to the court,” in the second sentence.*

*See 2016 Amendment notes below.*

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
839 .....	50:614.	May 5, 1950, ch. 169, §1 (Art. 39), 64 Stat. 121.

The word “When” is substituted for the word “Whenever”. The words “deliberates or votes” are substituted for the words “is to deliberate or vote”. The word “may” is substituted for the word “shall”. The word “shall” is inserted before the words “be in the presence” for clarity.

#### AMENDMENTS

2017—Subsec. (a)(4). Pub. L. 115-91 substituted “under section 853(b)(1) of this title (article 53(b)(1))” for “in non-capital cases unless the accused requests sentencing by members under section 825 of this title (article 25)”.

2016—Subsec. (a)(3). Pub. L. 114-328, §5222(1)(A), struck out “if permitted by regulations of the Secretary concerned,” before “holding” and “and” after “accused;”.

Subsec. (a)(4), (5). Pub. L. 114-328, §5222(1)(B), (C), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 114-328, §5222(2), struck out “, in cases in which a military judge has been detailed to the court,” after “the trial counsel, and”.

2009—Subsec. (d). Pub. L. 111-84 added subsec. (d).

2006—Pub. L. 109-163 redesignated concluding provisions of subsec. (a) as subsec. (b), substituted “Proceedings under subsection (a) shall be conducted” for “These proceedings shall be conducted”, inserted at end “If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by

this subsection may otherwise be established by audio-visual technology (such as videoteleconferencing technology).”, and redesignated former subsec. (b) as (c).

1990—Subsec. (a). Pub. L. 101-510 inserted at end “These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).”

1968—Pub. L. 90-632 added subsec. (a), designated existing provisions as subsec. (b), substituted “military judge” for “law officer”, and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 effective immediately after the amendments made by div. E (§§5001-5542) of Pub. L. 114-328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115-91, set out as a note under section 801 of this title.

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 1990 AMENDMENT

Pub. L. 101-510, div. A, title V, §541(e), Nov. 5, 1990, 104 Stat. 1565, provided that: “The amendments made by subsections (a) through (d) [amending this section and section 841 of this title] shall apply only to a court-martial convened on or after the date of the enactment of this Act [Nov. 5, 1990].”

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.

§ 840. Art. 40. Continuances

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(16), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 114-328, div. E, title LVII, §5223, Dec. 23, 2016, 130 Stat. 2909.)

AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LVII, § 5223, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2909, 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 “court-martial without a military judge” and inserting “summary court-martial”. See 2016 Amendment note below.*

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
840 .....	50:615.	May 5, 1950, ch. 169, §1 (Art. 40), 64 Stat. 121.

AMENDMENTS

2016—Pub. L. 114-328 substituted “summary court-martial” for “court-martial without a military judge”.

1968—Pub. L. 90-632 inserted reference to military judge.

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.

§ 841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90-632, §2(17), Oct. 24, 1968, 82 Stat. 1339; Pub. L.