

(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

(B) before announcement of findings under section 853 of this title (article 53);

the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

See 2016 Amendment note below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
844(a)	50:619(a).	May 5, 1950, ch. 169, §1 (Art. 44), 64 Stat. 122.
844(b)	50:619(b).	
844(c)	50:619(c).	

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

In subsection (b), the word “is” is substituted for the words “shall be held to be”.

In subsection (c), the word “after” is substituted for the words “subsequent to”. The word “before” is substituted for the words “prior to”. The word “is” is substituted for the words “shall be”.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.”

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.

§ 845. Art. 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of

the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 90-632, §2(19), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 114-328, div. E, title LVII, §5227, Dec. 23, 2016, 130 Stat. 2911.)

AMENDMENT OF SECTION

Pub. L. 114-328, div. E, title LVII, §5227, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2911, 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:

§ 845. Art. 45. Pleas of the accused

(a) IRREGULAR AND SIMILAR PLEAS.—If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) PLEAS OF GUILTY.—A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty is mandatory. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) HARMLESS ERROR.—A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

See 2016 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
845(a)	50:620(a).	May 5, 1950, ch. 169, §1 (Art. 45), 64 Stat. 122.
845(b)	50:620(b).	

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

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, §5227(c)(1), inserted heading.

Subsec. (b). Pub. L. 114-328, §5227(c)(2), inserted heading.

Pub. L. 114-328, §5227(a), substituted “is mandatory” for “may be adjudged” and struck out “or by a court-martial without a military judge” after “by the military judge” and “, if permitted by regulations of the Secretary concerned,” after “charge or specification may”.

Subsec. (c). Pub. L. 114-328, § 5227(b), added subsec. (c). 1968—Subsec. (a). Pub. L. 90-632, § 2(19)(A), substituted “after arraignment” for “arraigned before a court-martial”.

Subsec. (b). Pub. L. 90-632, § 2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

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.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—The counsel for the Government, the counsel for the accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) COUNSEL FOR ACCUSED INTERVIEW OF VICTIM OF ALLEGED SEX-RELATED OFFENSE.—(1) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an alleged sex-related offense who counsel for the Government intends to call to testify at a preliminary hearing under section 832 of this title (article 32) or a court-martial under this chapter, counsel for the accused shall make any request to interview the victim through the Special Victims’ Counsel or other counsel for the victim, if applicable.

(2) If requested by an alleged victim of an alleged sex-related offense who is subject to a request for interview under paragraph (1), any interview of the victim by counsel for the accused shall take place only in the presence of counsel for the Government, a counsel for the victim, or a Sexual Assault Victim Advocate.

(3) In this subsection, the term “alleged sex-related offense” means any allegation of—

(A) a violation of section 920, 920a, 920b, 920c, or 925 of this title (article 120, 120a, 120b, 120c, or 125); or

(B) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80).

(c) PROCESS.—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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109-163, div. A, title X, § 1057(a)(6), Jan. 6, 2006,

119 Stat. 3441; Pub. L. 113-66, div. A, title XVII, § 1704, Dec. 26, 2013, 127 Stat. 958; Pub. L. 113-291, div. A, title V, § 531(b), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114-328, div. E, title LVII, § 5228(a), Dec. 23, 2016, 130 Stat. 2911.)

AMENDMENT OF SECTION

Pub. L. 114-328, div. E, title LVII, § 5228(a), title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2911, 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:

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

(1) before a court-martial, military commission, or court of inquiry;

(2) at a deposition under section 849 of this title (article 49); or

(3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

(1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—

(A) for a court-martial, military commission, or court of inquiry;

(B) for a deposition under section 849 of this title (article 49);

(C) for an investigation of an offense under this chapter; or

(D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an