

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

See 2016 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
851(a) .....	50:626(a).	May 5, 1950, ch. 169, § 1
851(b) .....	50:626(b).	(Art. 51), 64 Stat. 124.
851(c) .....	50:626(c).	

In subsection (a), the words “in each case” are omitted as surplusage.

In subsection (b), the word “is” is substituted for the words “shall be” in the second sentence. The word “constitutes” is substituted for the words “shall constitute”. The word “However,” is substituted for the word “but”. The word “his” is substituted for the words “any such”. The words “the ruling is” are substituted for the words “such ruling be”. The words “voice vote” are substituted for the words “vote \* \* \* viva voce”.

In subsection (c), the word “must” is substituted for the word “shall” in clause (2), since a condition is prescribed, not a command. The words “United States” are substituted for the word “Government”.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5234(1), struck out “, and by members of a court-martial without a military judge upon questions of challenge,” after “on the sentence”.

Subsec. (b). Pub. L. 114-328, § 5234(2), struck out “and, except for questions of challenge, the president of a court-martial without a military judge” after “The military judge” and substituted “is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.” for “, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.”

Subsec. (c). Pub. L. 114-328, § 5234(3), struck out “or the president of a court-martial without a military judge” after “the military judge” in introductory provisions.

1968—Subsec. (a). Pub. L. 90-632, § 2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90-632, § 2(21)(B), substituted “military judge” for “law officer” and inserted reference to the military judge’s ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90-632, § 2(21)(C), substituted “military judge” for “law officer” and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90-632, § 2(21)(D), added subsec. (d).

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.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused’s sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90-632, § 2(22), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 114-328, div. E, title LVII, § 5235, Dec. 23, 2016, 130 Stat. 2916.)

AMENDMENT OF SECTION

Pub. L. 114-328, div. E, title LVII, § 5235, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2916, 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:*

§ 852. Art. 52. Votes required for conviction, sentencing, and other matters

(a) IN GENERAL.—No person may be convicted of an offense in a general or special court-martial, other than—

(1) after a plea of guilty under section 845(b) of this title (article 45(b));

(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

(b) LEVEL OF CONCURRENCE REQUIRED.—

(1) IN GENERAL.—Except as provided in subsection (a) and in paragraph (2), all matters to be decided by members of a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) SENTENCING.—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.

*See 2016 Amendment note below.*

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
852(a) .....	50:627(a).	May 5, 1950, ch. 169, § 1
852(b) .....	50:627(b).	(Art. 52), 64 Stat. 125.
852(c) .....	50:627(c).	

In subsections (a) and (b), the word “may” is substituted for the word “shall”.

In subsection (b)(2), the words “for more than” are substituted for the words “in excess of”.

In subsection (c), the word “disqualifies” is substituted for the words “shall disqualify”. The word “is” is substituted for the words “shall be” in the last two sentences.

#### AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to number of votes required for conviction of an offense for which the death penalty is mandatory, sentences, and all other questions, respectively.

1968—Subsec. (a)(2). Pub. L. 90-632, § 2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90-632, § 2(22)(B), provided that a determination to reconsider a finding of guilty or to re-

consider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

#### 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.

#### § 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 114-328, div. E, title LVII, § 5236, Dec. 23, 2016, 130 Stat. 2916; Pub. L. 115-91, div. A, title X, § 1081(c)(1)(G), Dec. 12, 2017, 131 Stat. 1598.)

#### AMENDMENT OF SECTION

*Pub. L. 115-91, div. A, title X, § 1081(c)(1)(G), (4), Dec. 12, 2017, 131 Stat. 1598, 1599, provided that, effective immediately after the amendment made by section 5236 of Pub. L. 114-328, set out below, takes effect as provided for in section 5542 of that Act, subsection (b)(1)(B) of this section is amended by striking “in a trial”. See 2017 Amendment note below.*

*Pub. L. 114-328, div. E, title LVII, § 5236, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2916, 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:*

§ 853. Art. 53. Findings and sentencing

(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) SENTENCING GENERALLY.—

(1) GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense in a trial by general or special court-martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.

(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.