

of subsec. (f) read as follows: "A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher."

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1992—Subsec. (a)(1). Pub. L. 102-484, §1052(11), substituted "section 942(e)(1)(B) of this title (article 142(e)(1)(B))" for "section 943(e)(1)(B) of this title (art. 143(e)(1)(B))".

Subsec. (i). Pub. L. 102-484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102-190 inserted at end "A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service."

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title X, §1062(a)(2), Oct. 23, 1992, 106 Stat. 2505, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992]."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102-190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101-189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Pub. L. 102-484, div. A, title X, §1062(b), Oct. 23, 1992, 106 Stat. 2505, provided that:

"(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note] if—

"(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

"(B) as of the date of the election, such individual is—

"(i) subject to the Civil Service Retirement System; or

"(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

"(2) An election under this subsection—

"(A) shall not be effective unless it is—

"(i) made within 30 days after the date of the enactment of this Act; and

"(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note]; and

"(B) may not be revoked.

"(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.]"

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Homeland Security.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Information from the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps on the following:

(i) The appellate review process, including—

(I) information on compliance with processing time goals;

(II) discussions of the circumstances surrounding cases in which general court-martial or special court-martial convictions are reversed as a result of command influence or denial of the right to a speedy review or otherwise remitted due to loss of records of trial or other administrative deficiencies; and

(III) discussions of cases in which a provision of this chapter is held unconstitutional.

(ii) Measures implemented by each armed force to ensure the ability of judge advocates to competently participate as trial and defense counsel in, and preside as military judges over, capital cases, national security cases, sexual assault cases, and proceedings of military commissions.

(iii) The independent views of the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps on the sufficiency of resources available within their respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.

(C) Any recommendation of the committee relating to—

(i) uniformity of policies as to sentences;

(ii) amendments to this chapter; and

(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee ap-

pointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101-189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103-337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; 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. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 112-239, div. A, title V, § 532, Jan. 2, 2013, 126 Stat. 1726; Pub. L. 114-328, div. E, title LXII, § 5521, Dec. 23, 2016, 130 Stat. 2962; Pub. L. 115-91, div. A, title V, § 531(k), Dec. 12, 2017, 131 Stat. 1386.)

AMENDMENT OF SECTION

Pub. L. 115-91, div. A, title V, § 531(k), (p), Dec. 12, 2017, 131 Stat. 1386, 1388, provided that, effective immediately after the amendment made by section 5521 of Pub. L. 114-328, set out below, takes effect as provided for in section 5542 of that Act, subsection (f) of this section is amended—

(1) in paragraph (1), by striking “fiscal year 2020” in the first sentence and inserting “fiscal year 2021”;

(2) in paragraph (2), by striking the sentence beginning “Not later than” and inserting the following new sentence: “The analysis under this paragraph shall be included in the assessment required by paragraph (1).”; and

(3) by striking paragraph (5) and inserting the following new paragraph (5):

(5) Reports.—With respect to each review and assessment under this subsection, the Panel shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives. Each report—

(A) shall set forth the results of the review and assessment concerned, including the findings and recommendations of the Panel; and

(B) shall be submitted not later than December 31 of the calendar year in which the review and assessment is concluded.

See 2017 Amendment notes below.

Pub. L. 114-328, div. E, title LXII, § 5521, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2962, 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:

§ 946. Art. 146. Military Justice Review Panel

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the “Military Justice Review Panel” (in this section referred to as the “Panel”).

(b) MEMBERS.—

(1) NUMBER OF MEMBERS.—The Panel shall be composed of thirteen members.

(2) APPOINTMENT OF CERTAIN MEMBERS.—Each of the following shall appoint one member of the Panel:

(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

(B) The Attorney General.

(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

(3) APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) The Chief Justice of the United States.

(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

(c) QUALIFICATIONS OF MEMBERS.—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

(e) TERM; VACANCIES.—Each member shall be appointed for a term of eight years, and no member may serve more than one term. Any vacancy shall be filled in the same manner as the original appointment.

(f) REVIEWS AND REPORTS.—

(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.—During fiscal year 2020, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.

(2) SENTENCING DATA COLLECTION AND REPORT.—During fiscal year 2020, the Panel shall gather and analyze sentencing data collected from each of the armed forces from general and special courts-martial applying offense-based sentencing under section 856 of this title (article 56). The sentencing data shall include the number of accused who request member sentencing and the number who request sentencing by military judge alone, the offenses which the accused were convicted of, and the resulting sentence for each offense in each case. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall provide the sentencing data in the format and for the duration established by the chair of the Panel. Not later

than October 31, 2020, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives through the Secretary of Defense a report setting forth the Panel's findings and recommendations on the need for sentencing reform.

(3) PERIODIC COMPREHENSIVE REVIEWS.—During fiscal year 2024 and every eight years thereafter, the Panel shall conduct a comprehensive review and assessment of the operation of this chapter.

(4) PERIODIC INTERIM REVIEWS.—During fiscal year 2028 and every eight years thereafter, the Panel shall conduct an interim review and assessment of such other aspects of the operation of this chapter as the Panel considers appropriate. In addition, at the request of the Secretary of Defense, the Panel may, at any time, review and assess other specific matters relating to the operation of this chapter.

(5) REPORTS.—Not later than December 31 of each year during which the Panel conducts a review and assessment under this subsection, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of such review and assessment, including the Panel's findings and recommendations.

(g) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties under this section.

(h) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chair of the Panel, a department or agency of the Federal Government shall provide information that the Panel considers necessary to carry out its duties under this section.

(i) ADMINISTRATIVE MATTERS.—

(1) MEMBERS TO SERVE WITHOUT PAY.—Members of the Panel shall serve without pay, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Panel.

(2) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the Panel.

(j) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel.

See 2016 Amendment note below.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2017—Subsec. (f)(1). Pub. L. 115-91, § 531(k)(1), substituted “fiscal year 2021” for “fiscal year 2020”.

Subsec. (f)(2). Pub. L. 115-91, § 531(k)(2), substituted “The analysis under this paragraph shall be included in the assessment required by paragraph (1).” for “Not later than October 31, 2020, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives through the Secretary of

Defense a report setting forth the Panel's findings and recommendations on the need for sentencing reform.”

Subsec. (f)(5). Pub. L. 115-91, § 531(k)(3), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: “Not later than December 31 of each year during which the Panel conducts a review and assessment under this subsection, the Panel shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the results of such review and assessment, including the Panel's findings and recommendations.”

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to establishment, membership, and duties of Code committee.

2013—Subsec. (c)(2)(B), (C). Pub. L. 112-239 added subpar. (B) and redesignated former subpar. (B) as (C).

2002—Subsec. (c)(1)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1999—Subsec. (c)(1)(A). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (c)(1)(A). 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”.

1994—Subsec. (b)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

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 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (c) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

§ 946a. Art. 146a. Annual reports

(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

(b) SERVICE REPORTS.—Not later than December 31 each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following: