

(b) Nothing in section 4 of Annex 2 shall be construed to invalidate the prosecution of any offense committed before January 1, 2019. The maximum punishment for an offense committed before January 1, 2019, shall not exceed the maximum punishment in effect at the time of the commission of such offense.

(c) Nothing in Annex 2 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to January 1, 2019. Except as otherwise provided in this order, the amendments in Annex 2 shall not apply in any case in which charges are referred to trial by court-martial before January 1, 2019. Except as otherwise provided in this order, proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been prescribed.

SEC. 6. (a) The amendments to Articles 2, 56(d), 58a, and 63 of the UCMJ [10 U.S.C. 802, 856(d), 858a, 863] enacted by sections 5102, 5301, 5303, and 5327 of the MJA apply only to cases in which all specifications allege offenses committed on or after January 1, 2019.

(b) If the accused is found guilty of a specification alleging the commission of one or more offenses before January 1, 2019, Article 60 of the UCMJ [10 U.S.C. 860], as in effect on the date of the earliest offense of which the accused was found guilty, shall apply to the convening authority, in addition to the suspending authority in Article 60a(c) [10 U.S.C. 860a(c)] as enacted by the MJA, to the extent that Article 60:

(1) requires action by the convening authority on the sentence;

(2) permits action by the convening authority on findings;

(3) authorizes the convening authority to modify the findings and sentence of a court-martial, dismiss any charge or specification by setting aside a finding of guilty thereto, or change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification;

(4) authorizes the convening authority to order a proceeding in revision or a rehearing; or

(5) authorizes the convening authority to approve, disapprove, commute, or suspend a sentence in whole or in part.

SEC. 7. The amendment to Article 15 of the UCMJ [10 U.S.C. 815] enacted by section 5141 of the MJA shall apply to any nonjudicial punishment imposed on or after January 1, 2019.

SEC. 8. The amendments to Articles 32 and 34 of the UCMJ [10 U.S.C. 832, 834] enacted by sections 5203 and 5205 of the MJA apply with respect to preliminary hearings conducted and advice given on or after January 1, 2019.

SEC. 9. The amendments to Article 79 of the UCMJ [10 U.S.C. 879] enacted by section 5402 of the MJA and the amendments to Appendix 12A to the Manual for Courts-Martial, United States, made by this order apply only to offenses committed on or after January 1, 2019.

SEC. 10. Except as provided by Rule for Courts-Martial 902A, as promulgated by Annex 2, any change to sentencing procedures:

(a) made by Articles 16(c)(2), 19(b), 25(d)(2) and (3), 39(a)(4), 53, 53a, or 56(c) of the UCMJ [10 U.S.C. 816(c)(2), 819(b), 825(d)(2) and (3), 839(a)(4), 853, 853a, 856(c)], as enacted by sections 5161, 5163, 5182, 5222, 5236, 5237, and 5301 of the MJA; or

(b) included in Annex 2 in rules implementing those articles, applies only to cases in which all specifications allege offenses committed on or after January 1, 2019.

SEC. 11. The amendments to Article 146 of the UCMJ [10 U.S.C. 946] enacted by section 5521 of the MJA and the new Article 146a [10 U.S.C. 946a] enacted by section 5522 of the MJA shall take effect on the day after the report for fiscal year 2017 required by Article 146(c) of the UCMJ (as in effect before the MJA's amendments) is submitted in accordance with Article 146(c)(1), but in no event later than December 1, 2018.

SEC. 12. In accordance with Article 33 of the UCMJ [10 U.S.C. 833], as amended by section 5204 of the MJA, the Secretary of Defense, in consultation with the Secretary of Homeland Security, will issue nonbinding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to the disposition of charges and specifications in the interest of justice and discipline under Articles 30 and 34 of the UCMJ [10 U.S.C. 830, 834]. That guidance will take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Federal Government with respect to the disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

DONALD J. TRUMP.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3)(A) While on inactive-duty training and during any of the periods specified in subparagraph (B)—

(i) members of a reserve component; and

(ii) members of the Army National Guard of the United States or the Air National Guard of the United States, but only when in Federal service.

(B) The periods referred to in subparagraph (A) are the following:

(i) Travel to and from the inactive-duty training site of the member, pursuant to orders or regulations.

(ii) Intervals between consecutive periods of inactive-duty training on the same day, pursuant to orders or regulations.

(iii) Intervals between inactive-duty training on consecutive days, pursuant to orders or regulations.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party

or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

- (1) submitted voluntarily to military authority;
- (2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;
- (3) received military pay or allowances; and
- (4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

- (A) a preliminary hearing under section 832 of this title (article 32);
- (B) trial by court-martial; or
- (C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

- (A) on active duty; or
- (B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty

was approved by the Secretary concerned, may not—

- (A) be sentenced to confinement; or
- (B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; Pub. L. 86-70, §6(b), June 25, 1959, 73 Stat. 142; Pub. L. 86-624, §4(b), July 12, 1960, 74 Stat. 411; Pub. L. 87-651, title I, §104, Sept. 7, 1962, 76 Stat. 508; Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-107, title VIII, §801(a), Nov. 9, 1979, 93 Stat. 810; Pub. L. 96-513, title V, §511(24), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98-209, §13(a), Dec. 6, 1983, 97 Stat. 1408; Pub. L. 99-661, div. A, title VIII, §804(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 104-106, div. A, title XI, §1133(b), Feb. 10, 1996, 110 Stat. 466; Pub. L. 109-364, div. A, title V, §552, Oct. 17, 2006, 120 Stat. 2217; Pub. L. 109-366, §4(a)(1), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111-84, div. A, title XVIII, §1803(a)(1), Oct. 28, 2009, 123 Stat. 2612; Pub. L. 113-66, div. A, title XVII, §1702(c)(3)(A), Dec. 26, 2013, 127 Stat. 957; Pub. L. 114-328, div. E, title LI, §5102, Dec. 23, 2016, 130 Stat. 2894.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
802	50:552.	May 5, 1950, ch. 169, §1 (Art. 2), 64 Stat. 109.

In clause (1), the words "Members of" are substituted for the words "All persons belonging to". The words "all" and "the same" are omitted as surplusage. The word "when" is inserted after the word "dates".

In clauses (1) and (8), the words "of the United States" are omitted as surplusage.

In clause (3), the words "Members of a reserve component" are substituted for the words "Reserve personnel". The word "orders" in the last clause is omitted as surplusage.

In clause (4), the word "receive" is omitted as surplusage.

In clauses (4) and (5), the word "members" is substituted for the word "personnel".

In clause (8), the word "members" is substituted for the word "personnel".

In clauses (11) and (12), the word "outside" is substituted for the word "without" wherever it occurs. The words "the continental limits of" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words "the provision of", "all", and "territories" are omitted as surplusage.

In clause (12), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

1962 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
802(11), (12).	50:552(11) and (12).	Aug. 1, 1956, ch. 852, §23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 1 (Art. 2) of act May 5, 1950, ch. 169, cited as the source of this section, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

2016—Subsec. (a)(3). Pub. L. 114-328 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.”

2013—Subsec. (d)(1)(A). Pub. L. 113-66 substituted “a preliminary hearing under section 832” for “investigation under section 832”.

2009—Subsec. (a)(13). Pub. L. 111-84 amended par. (13) generally. Prior to amendment, par. (13) read as follows: “Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.”

2006—Subsec. (a)(10). Pub. L. 109-364 substituted “declared war or a contingency operation” for “war”.

Subsec. (a)(13). Pub. L. 109-366 added par. (13).

1996—Subsec. (e). Pub. L. 104-106 added subsec. (e).

1988—Subsec. (a)(11), (12). Pub. L. 100-456 struck out “the Canal Zone,” before “the Commonwealth”.

1986—Subsec. (a)(3). Pub. L. 99-661, §804(a)(1), substituted “on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service” for “they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter”.

Subsec. (d). Pub. L. 99-661, §804(a)(2), added subsec. (d).

1983—Subsec. (a)(11), (12). Pub. L. 98-209, §13(a)(1), substituted “outside the Canal Zone” for “outside the following: the Canal Zone” and inserted “the Commonwealth of” before “Puerto Rico”.

Subsec. (b). Pub. L. 98-209, §13(a)(2), struck out “of this section” after “subsection (a)”.

1980—Subsec. (a)(8). Pub. L. 96-513 substituted “National Oceanic and Atmospheric Administration” for “Environmental Science Services Administration”.

1979—Pub. L. 96-107 designated existing provisions as subsec. (a) and added subssecs. (b) and (c).

1966—Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey” in cl. (8).

1962—Pub. L. 87-651 inserted “Guam,” after “Puerto Rico,” in cls. (11) and (12).

1960—Pub. L. 86-624 struck out “the main group of the Hawaiian Islands,” before “Puerto Rico” in cls. (11) and (12).

1959—Pub. L. 86-70 struck out “that part of Alaska east of longitude 172 degrees west,” before “the Canal Zone” in cls. (11) and (12).

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-66, div. A, title XVII, §1702(d)(1), Dec. 26, 2013, 127 Stat. 958, as amended by Pub. L. 113-291, div. A, title V, §531(g)(1), Dec. 19, 2014, 128 Stat. 3365, provided that: “The amendments made by subsections (a) and (c)(3) [amending this section and sections 832, 834,

838, 847, and 948b of this title] shall take effect on the later of December 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 shall apply with respect to preliminary hearings conducted on or after that effective date.”

[Pub. L. 113-291, div. A, title V, §531(g)(1), Dec. 19, 2014, 128 Stat. 3365, provided that the amendment by section 531(g)(1) to section 1702(d)(1) of Pub. L. 113-66, set out above, is effective as of Dec. 26, 2013, and as if included in section 1702(d)(1) of Pub. L. 113-66, as enacted.]

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §804(e), Nov. 14, 1986, 100 Stat. 3908, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99-661, set out below].”

Pub. L. 99-661, div. A, title VIII, §808, Nov. 14, 1986, 100 Stat. 3909, provided that: “Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806, respectively, of this title], this title and the amendments made by this title [enacting section 850a of this title, amending this section and sections 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under this section and sections 801, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of—

“(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

“(2) the date specified in an Executive order for such amendments to take effect.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

APPLICABILITY OF UNIFORM CODE OF MILITARY JUSTICE TO MEMBERS OF THE ARMED FORCES ORDERED TO DUTY OVERSEAS IN INACTIVE DUTY FOR TRAINING STATUS

Pub. L. 109-364, div. A, title V, §551, Oct. 17, 2006, 120 Stat. 2217, provided that: “Not later than March 1, 2007, the Secretaries of the military departments shall prescribe regulations, or amend current regulations, in order to provide that members of the Armed Forces who are ordered to duty at locations overseas in an inactive duty for training status are subject to the juris-

diction of the Uniform Code of Military Justice, pursuant to the provisions of section 802(a)(3) of title 10, United States Code (article 2(a)(3) of the Uniform Code of Military Justice), continuously from the commencement of execution of such orders to the conclusion of such orders.”

ADVISORY COMMITTEE ON CRIMINAL LAW JURISDICTION OVER CIVILIANS ACCOMPANYING ARMED FORCES IN TIME OF ARMED CONFLICT

Pub. L. 104-106, div. A, title XI, §1151, Feb. 10, 1996, 110 Stat. 467, directed the Secretary of Defense and the Attorney General, not later than 45 days after Feb. 10, 1996, to jointly appoint an advisory committee to review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces outside the United States in time of armed conflict, directed the committee to transmit to the Secretary of Defense and the Attorney General a report setting forth its findings and recommendations not later than Dec. 15, 1996, directed the Secretary of Defense and the Attorney General to jointly transmit the report of the committee to Congress not later than Jan. 15, 1997, and provided that the committee would terminate 30 days after the date on which the report had been submitted to Congress.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355; Ex. Ord. No. 13286, §76, Feb. 28, 2003, 68 F.R. 106231, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take

part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Pub. L. 99-661, div. A, title VIII, §804(b), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 102-484, div. A, title X, §1063, Oct. 23, 1992, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
803(a)	50:553(a).	May 5, 1950, ch. 169, §1 (Art. 3), 64 Stat. 109.
803(b)	50:553(b).	
803(c)	50:553(c).	

In subsection (a), the words “the provisions of” are omitted as surplusage. The words “no * * * may” are substituted for the words “any * * * shall not”. The word “for” is substituted for the word “of” before the words “five years”. The words “of a State, a Territory, or” are substituted for the words “any State or Territory thereof or of”. The word “court-martial” is substituted for the word “courts-martial”.

In subsection (b), the words “Each person” are substituted for the words “All persons”. The words “who is later” are substituted for the word “subsequently”.