

1968—Pub. L. 90-632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

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 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 1989 AMENDMENT

Pub. L. 101-189, div. A, title XIII, §1302(b), Nov. 29, 1989, 103 Stat. 1576, provided that: "Subsection (e) of section 869 of title 10, United States Code, as added by subsection (a), shall apply with respect to cases in which a finding of guilty is adjudged by a general court-martial after the date of the enactment of this Act [Nov. 29, 1989]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) 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 effective at end of 60-day period beginning on Nov. 20, 1981, see section 7(a) 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 Oct. 24, 1968, see section 4(b) of Pub. L. 90-632, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Pub. L. 98-209, §7(e)(2), Dec. 6, 1983, 97 Stat. 1403, provided that the two-year period specified under the second sentence of subsec. (b) of this section did not apply to any application filed in the office of the appropriate Judge Advocate General on or before Oct. 1, 1983, and that the application in such a case would be considered in the same manner and with the same effect as if such two-year period had not been enacted.

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of

Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

- (1) when requested by the accused;
- (2) when the United States is represented by counsel; or
- (3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(f) To the greatest extent practicable, in any capital case, at least one defense counsel under subsection (c) shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90-632, §2(31), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98-209, §10(c)(3), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114-328, div. E, title LIX, §5334, Dec. 23, 2016, 130 Stat. 2936.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
870(a)	50:657(a).	May 5, 1950, ch. 169, §1 (Art. 70), 64 Stat. 130.
870(b)	50:657(b).	
870(c)	50:657(c).	
870(d)	50:657(d).	
870(e)	50:657(e).	

In subsection (a), the word "detail" is substituted for the word "appoint", since the filling of the position involved is not appointment to an office in the constitutional sense. The word "commissioned" is inserted for clarity. The word "are" is substituted for the words "shall be". The words "the provisions of" are omitted as surplusage.

In subsections (b) and (c), the word "shall" is substituted for the words "It shall be the duty of * * * to".

In subsection (c)(3), the word "sent" is substituted for the word "transmitted".

In subsection (d), the word "has" is substituted for the words "shall have".

In subsection (e), the word "directs" is substituted for the words "shall direct".

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-328 added subsec. (f).
 1994—Subsecs. (b) to (d). Pub. L. 103-337 substituted "Court of Criminal Appeals" for "Court of Military Review" and "Court of Appeals for the Armed Forces" for "Court of Military Appeals" wherever appearing.

1983—Subsec. (b). Pub. L. 98-209, §10(c)(3)(A), inserted provision that Appellate Government counsel may rep-

resent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98-209, §10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90-632 substituted “Court of Military Review” for “board of review” whenever appearing.

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 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after 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 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.

§ 871. Repealed. Pub. L. 114-328, div. E, title LVIII, § 5302(b)(2), Dec. 23, 2016, 130 Stat. 2923]

Section, Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90-632, § 2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98-209, § 5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103-337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 113-66, div. A, title XVII, § 1702(c)(2), Dec. 26, 2013, 127 Stat. 957, related to execution and suspension of various types of sentences.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 857 of this title (article 57). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to con-

vene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114-328, div. E, title LIX, § 5335, Dec. 23, 2016, 130 Stat. 2936.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(a)	50:659(a).	May 5, 1950, ch. 169, §1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	
872(c)	50:659(c).	

In subsection (a), the word “Before” is substituted for the words “Prior to”.

In subsection (b), the words “be effective * * * to” are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word “is” is substituted for the words “shall * * * be” in the last sentence. The word “sent” is substituted for the word “forwarded”. The words “Secretary concerned” are substituted for the words “Secretary of the Department”.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5335(a), (b)(1), inserted “The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing.” after first sentence and substituted “if the probationer so desires” for “if he so desires” in last sentence.

Subsec. (b). Pub. L. 114-328, § 5335(b)(2), substituted “If the officer exercising general court-martial jurisdiction” for “If he” and “section 857 of this title (article 57)” for “section 871(c) of this title (article 71(c))”.

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.

§ 873. Art. 73. Petition for a new trial

At any time within three years after the date of the entry of judgment under section 860c of this title (article 60c), the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused’s case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90-632, § 2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114-328, div. E, title LIX, § 5336, Dec. 23, 2016, 130 Stat. 2937.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873	50:660.	May 5, 1950, ch. 169, §1 (Art. 73), 64 Stat. 132.

The words “the ground” are substituted for the word “grounds”. The words “as the case may be” are sub-