

Stat. 1601, added items 825a, 826a, and 829 and struck out former items 825a “Art. 25a. Number of members in capital cases” and 829 “Art. 29. Absent and additional members”.

2001—Pub. L. 107–107, div. A, title V, § 582(b)(2), Dec. 28, 2001, 115 Stat. 1124, added item 825a.

1968—Pub. L. 90–632, § 2(8), Oct. 24, 1968, 82 Stat. 1336, substituted “Military judge of a general or special court-martial” for “Law officer of a general court-martial” in item 826.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

- (1) the President of the United States;
- (2) the Secretary of Defense;
- (3) the commanding officer of a unified or specified combatant command;
- (4) the Secretary concerned;
- (5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
- (6) the commander of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
- (7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;
- (8) any other commanding officer designated by the Secretary concerned; or
- (9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 99–433, title II, § 211(b), Oct. 1, 1986, 100 Stat. 1017; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 114–328, div. E, title LV, § 5181, Dec. 23, 2016, 130 Stat. 2899.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
822(a)	50:586(a).	May 5, 1950, ch. 169, § 1
822(b)	50:586(b).	(Art. 22), 64 Stat. 115.

Subsection (a)(2) is substituted for the words “the Secretary of a Department”.

In subsection (a)(4), the words “continental limits of the” are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words “any other commanding officer” are substituted for the words “such other commanding officers as may be”.

In subsection (b), the word “If” is substituted for the word “When”. The words “if considered” are substituted for the words “when deemed”.

AMENDMENTS

2016—Subsec. (a)(6). Pub. L. 114–328 struck out “in chief” after “the commander”.

2006—Subsec. (a)(5). Pub. L. 109–163 struck out “a Territorial Department,” before “an Army Group”.

1986—Subsec. (a)(2) to (9). Pub. L. 99–433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

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.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- (7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
823(a)	50:587(a).	May 5, 1950, ch. 169, § 1
823(b)	50:587(b).	(Art. 23), 64 Stat. 115.

In subsection (a)(7), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (b), the word “If” is substituted for the word “When”. The words “if considered” are substituted for the words “when deemed”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
824(a)	50:588(a).	May 5, 1950, ch. 169, § 1 (Art. 24), 64 Stat. 116.
824(b)	50:588(b).	

In subsection (a)(4), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the words "only one commissioned" are substituted for the words "but one" for clarity. The word "considered" is substituted for the word "deemed".

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed

written statement of the reasons for non-availability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 90-632, §2(7), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98-209, §§3(b), 13(c), Dec. 6, 1983, 97 Stat. 1394, 1408; Pub. L. 99-661, div. A, title VIII, §803(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 114-328, div. E, title LV, §5182, title LVI, §5203(e)(2), Dec. 23, 2016, 130 Stat. 2899, 2906.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
825(a)	50:589(a).	May 5, 1950, ch. 169, § 1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word "commissioned" is inserted before the word "officer" for clarity. The word "is" is substituted for the words "shall be".

In subsections (a), (b), and (c)(1), the words "with the armed forces" are omitted as surplusage.

In subsection (b), the word "is" is substituted for the words "shall be". The words "a commissioned" are substituted for the word "an" for clarity.