

In subsection (d), the word “are” is substituted for the words “shall be.” The word “does” is substituted for the words “in any case shall”.

AMENDMENTS

2016—Pub. L. 114-328, § 5203(a), substituted “Preliminary hearing required before referral to general court-martial” for “Preliminary hearing” in section catchline.

Subsecs. (a) to (c). Pub. L. 114-328, § 5203(a), added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which related to requirement of preliminary hearing, hearing officer, and report of hearing results, respectively.

Subsec. (d)(1). Pub. L. 114-328, § 5203(b)(1), substituted “this section” for “subsection (a)”.

Subsec. (d)(2). Pub. L. 114-328, § 5203(b)(2), substituted “that is relevant to the issues for determination under subsection (a)(2).” for “in defense and mitigation, relevant to the limited purposes of the hearing, as provided for in paragraph (4) and subsection (a)(2).”

Subsec. (d)(3). Pub. L. 114-328, § 5203(b)(3), inserted at end “A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).”

Subsec. (d)(4). Pub. L. 114-328, § 5203(b)(4), substituted “determinations under subsection (a)(2)” for “the limited purposes of the hearing, as provided in subsection (a)(2)”.

Subsec. (e). Pub. L. 114-328, § 5203(c), substituted “under such rules as the President may prescribe” for “as prescribed by the Manual for Courts-Martial”.

Subsec. (g). Pub. L. 114-328, § 5203(d), inserted at end “A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.”

2014—Subsec. (a)(1). Pub. L. 113-291 inserted “, unless such hearing is waived by the accused” after “preliminary hearing”.

2013—Pub. L. 113-66 substituted “Preliminary hearing” for “Investigation” in section catchline and amended text generally. Prior to amendment, section provided that no charge or specification may be referred to general court-martial for trial until thorough and impartial investigation of all the matters had been made.

1996—Subsecs. (d), (e). Pub. L. 104-106 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Subsec. (b). Pub. L. 97-81 substituted “The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section” for “Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command”.

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

Amendment by Pub. L. 113-66 effective on the later of Dec. 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 applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113-66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply

with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

§ 833. Art 33. Disposition guidance

The President shall direct the Secretary of Defense to issue, 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, non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 114-328, div. E, title LVI, § 5204, Dec. 23, 2016, 130 Stat. 2906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
833	50:604.	May 5, 1950, ch. 169, § 1 (Art. 33), 64 Stat. 119.

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.”

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.

§ 834. Art. 34. Advice to convening authority before referral for trial

(a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;