

(2) A court-martial with a military judge and members is a trial in the sense of this section (article) if, without fault of the accused—

(A) after the members, having taken an oath as members under section 842 of this title (article 42) and after completion of challenges under section 841 of this title (article 41), are impaneled; and

(B) before announcement of findings under section 853 of this title (article 53);

the case is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 114-328, div. E, title LVII, § 5226, Dec. 23, 2016, 130 Stat. 2910.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
844(a)	50:619(a).	May 5, 1950, ch. 169, § 1
844(b)	50:619(b).	(Art. 44), 64 Stat. 122.
844(c)	50:619(c).	

In subsection (a), the word “may” is substituted for the word “shall”.

In subsection (b), the word “is” is substituted for the words “shall be held to be”.

In subsection (c), the word “after” is substituted for the words “subsequent to”. The word “before” is substituted for the words “prior to”. The word “is” is substituted for the words “shall be”.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.”

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.

§ 845. Art. 45. Pleas of the accused

(a) IRREGULAR AND SIMILAR PLEAS.—If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) PLEAS OF GUILTY.—A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty is mandatory. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea

of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(c) HARMLESS ERROR.—A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 90-632, § 2(19), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 114-328, div. E, title LVII, § 5227, Dec. 23, 2016, 130 Stat. 2911.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
845(a)	50:620(a).	May 5, 1950, ch. 169, § 1
845(b)	50:620(b).	(Art. 45), 64 Stat. 122.

In subsection (b), the word “may” is substituted for the word “shall”.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5227(c)(1), inserted heading.

Subsec. (b). Pub. L. 114-328, § 5227(c)(2), inserted heading.

Pub. L. 114-328, § 5227(a), substituted “is mandatory” for “may be adjudged” and struck out “or by a court-martial without a military judge” after “by the military judge” and “, if permitted by regulations of the Secretary concerned,” after “charge or specification may”.

Subsec. (c). Pub. L. 114-328, § 5227(b), added subsec. (c). 1968—Subsec. (a). Pub. L. 90-632, § 2(19)(A), substituted “after arraignment” for “arraigned before a court-martial”.

Subsec. (b). Pub. L. 90-632, § 2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

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 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.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence in trials by court-martial

(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.

(b) SUBPOENA AND OTHER PROCESS GENERALLY.—Any subpoena or other process issued under this section (article)—

(1) shall be similar to that which courts of the United States having criminal jurisdiction may issue;

(2) shall be executed in accordance with regulations prescribed by the President; and

(3) shall run to any part of the United States and to the Commonwealths and possessions of the United States.

(c) SUBPOENA AND OTHER PROCESS FOR WITNESSES.—A subpoena or other process may be issued to compel a witness to appear and testify—

- (1) before a court-martial, military commission, or court of inquiry;
- (2) at a deposition under section 849 of this title (article 49); or
- (3) as otherwise authorized under this chapter.

(d) SUBPOENA AND OTHER PROCESS FOR EVIDENCE.—

- (1) IN GENERAL.—A subpoena or other process may be issued to compel the production of evidence—
- (A) for a court-martial, military commission, or court of inquiry;
 - (B) for a deposition under section 849 of this title (article 49);
 - (C) for an investigation of an offense under this chapter; or
 - (D) as otherwise authorized under this chapter.

(2) INVESTIGATIVE SUBPOENA.—An investigative subpoena under paragraph (1)(C) may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the Government to issue such a subpoena or a military judge issues such a subpoena pursuant to section 830a of this title (article 30a).

(3) WARRANT OR ORDER FOR WIRE OR ELECTRONIC COMMUNICATIONS.—With respect to an investigation of an offense under this chapter, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) may issue warrants or court orders for the contents of, and records concerning, wire or electronic communications in the same manner as such warrants and orders may be issued by a district court of the United States under chapter 121 of title 18, subject to such limitations as the President may prescribe by regulation.

(e) REQUEST FOR RELIEF FROM SUBPOENA OR OTHER PROCESS.—If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military judge detailed in accordance with section 826 or 830a of this title (article 26 or 30a) shall review the request and shall—

- (1) order that the subpoena or other process be modified or withdrawn, as appropriate; or
- (2) order the person to comply with the subpoena or other process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109-163, div. A, title X, §1057(a)(6), Jan. 6, 2006, 119 Stat. 3441; Pub. L. 113-66, div. A, title XVII, §1704, Dec. 26, 2013, 127 Stat. 958; Pub. L. 113-291, div. A, title V, §531(b), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114-328, div. E, title LVII, §5228(a), Dec. 23, 2016, 130 Stat. 2911.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
846	50:621.	May 5, 1950, ch. 169, §1 (Art. 46), 64 Stat. 122.

The word “Commonwealths” is inserted to reflect the present status of Puerto Rico.

AMENDMENTS

2016—Pub. L. 114-328, §5228(a)(5), amended section catchline generally, substituting “Opportunity to obtain witnesses and other evidence in trials by court-martial” for “Opportunity to obtain witnesses and other evidence”.

Subsec. (a). Pub. L. 114-328, §5228(a)(1), substituted “In a case referred for trial by court-martial, the trial counsel, the defense counsel,” for “The counsel for the Government, the counsel for the accused.”

Subsec. (b). Pub. L. 114-328, §5228(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to request by counsel for accused to interview the victim of an alleged sex-related offense.

Subsec. (c). Pub. L. 114-328, §5228(a)(3), amended subsec. (c) generally. Prior to amendment, text read as follows: “Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Commonwealths and possessions.”

Subsecs. (d), (e). Pub. L. 114-328, §5228(a)(4), added subsecs. (d) and (e).

2014—Subsec. (a). Pub. L. 113-291, §531(b)(2), (3)(B), substituted “counsel for the Government” for “trial counsel” and “counsel for the accused” for “defense counsel”.

Subsec. (b). Pub. L. 113-291, §531(b)(3)(A), which directed substitution of “COUNSEL FOR ACCUSED” for “DEFENSE COUNSEL” in heading of section, was executed by making the substitution in the heading of subsec. (b) to reflect the probable intent of Congress.

Pub. L. 113-291, §531(b)(2), (3)(B), substituted “counsel for the Government” for “trial counsel” and “counsel for the accused” for “defense counsel” wherever appearing.

Subsec. (b)(1). Pub. L. 113-291, §531(b)(1), substituted “through the Special Victims’ Counsel or other counsel for the victim, if applicable” for “through trial counsel”.

2013—Pub. L. 113-66 designated first sentence as subsec. (a) and second sentence as subsec. (c), inserted headings, and added subsec. (b).

2006—Pub. L. 109-163 substituted “Commonwealths and possessions” for “Territories, Commonwealths, and possessions”.

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.

§ 847. Art. 47. Refusal of person not subject to chapter to appear, testify, or produce evidence

(a) IN GENERAL.—(1) Any person described in paragraph (2) who—

- (A) willfully neglects or refuses to appear; or
- (B) willfully refuses to qualify as a witness or to testify or to produce any evidence which that person is required to produce;

is guilty of an offense against the United States.