

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to number of votes required for conviction of an offense for which the death penalty is mandatory, sentences, and all other questions, respectively.

1968—Subsec. (a)(2). Pub. L. 90-632, §2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90-632, §2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

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.

**§ 853. Art. 53. Findings and sentencing**

(a) ANNOUNCEMENT.—A court-martial shall announce its findings and sentence to the parties as soon as determined.

(b) SENTENCING GENERALLY.—

(1) GENERAL AND SPECIAL COURTS-MARTIAL.—

(A) SENTENCING BY MILITARY JUDGE.—Except as provided in subparagraph (B), and in subsection (c) for capital offenses, if the accused is convicted of an offense in a trial by general or special court-martial, the military judge shall sentence the accused.

(B) SENTENCING BY MEMBERS.—If the accused is convicted of an offense by general or special court-martial consisting of a military judge and members and the accused elects sentencing by members under section 825 of this title (article 25), the members shall sentence the accused.

(C) SENTENCE OF THE ACCUSED.—The sentence determined pursuant to this paragraph constitutes the sentence of the accused.

(2) SUMMARY COURTS-MARTIAL.—If the accused is convicted of an offense in a trial by summary court-martial, the court-martial shall sentence the accused.

(c) SENTENCING FOR CAPITAL OFFENSES.—

(1) IN GENERAL.—In a capital case, if the accused is convicted of an offense for which the court-martial may sentence the accused to death, the members shall determine whether the sentence for that offense shall be death or a lesser authorized punishment.

(2) LESSER AUTHORIZED PUNISHMENTS.—In accordance with regulations prescribed by the President, the court-martial may include in any sentence to death or life in prison without eligibility for parole other lesser punishments authorized under this chapter.

(3) OTHER NON-CAPITAL OFFENSES.—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 subsection (b), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 114-328, div. E, title LVII, §5236, Dec. 23, 2016, 130 Stat. 2916; Pub. L. 115-91, div. A, title X, §1081(c)(1)(G), Dec. 12, 2017, 131 Stat. 1598.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
853 .....	50:628.	May 5, 1950, ch. 169, §1 (Art. 53), 64 Stat. 125.

The word “A” is substituted for the word “Every”.

AMENDMENTS

2017—Subsec. (b)(1)(B). Pub. L. 115-91 struck out “in a trial” after “convicted of an offense”.

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “A court-martial shall announce its findings and sentence to the parties as soon as determined.”

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.

**§ 853a. Art. 53a. Plea agreements**

(a) IN GENERAL.—(1) At any time before the announcement of findings under section 853 of this title (article 53), the convening authority and the accused may enter into a plea agreement with respect to such matters as—

(A) the manner in which the convening authority will dispose of one or more charges and specifications; and

(B) limitations on the sentence that may be adjudged for one or more charges and specifications.

(2) The military judge of a general or special court-martial may not participate in discussions between the parties concerning prospective terms and conditions of a plea agreement.

(b) LIMITATION ON ACCEPTANCE OF PLEA AGREEMENTS.—The military judge of a general or special court-martial shall reject a plea agreement that—

(1) contains a provision that has not been accepted by both parties;

(2) contains a provision that is not understood by the accused;

(3) except as provided in subsection (c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in section 856(b)(2) of this title (article 56(b)(2));

(4) is prohibited by law; or

(5) is contrary to, or is inconsistent with, a regulation prescribed by the President with respect to terms, conditions, or other aspects of plea agreements.

(c) LIMITED CONDITIONS FOR ACCEPTANCE OF PLEA AGREEMENT FOR SENTENCE BELOW MANDATORY MINIMUM FOR CERTAIN OFFENSES.—With respect to an offense referred to in section 856(b)(2) of this title (article 56(b)(2))—

(1) the military judge may accept a plea agreement that provides for a sentence of bad conduct discharge; and

(2) upon recommendation of the trial counsel, in exchange for substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the military judge may accept a plea agreement that provides for a sentence that is less than the mandatory minimum sentence for the offense charged.

(d) BINDING EFFECT OF PLEA AGREEMENT.—Upon acceptance by the military judge of a general or special court-martial, a plea agreement shall bind the parties and the court-martial.

(Added Pub. L. 114-328, div. E, title LVII, § 5237, Dec. 23, 2016, 130 Stat. 2917; amended Pub. L. 115-91, div. A, title V, § 531(d), title X, § 1081(c)(1)(H), Dec. 12, 2017, 131 Stat. 1384, 1598.)

#### AMENDMENTS

2017—Subsec. (b)(4), (5). Pub. L. 115-91, § 531(d)(1), added pars. (4) and (5).

Subsec. (d). Pub. L. 115-91, § 1081(c)(1)(H), which directed substitution of “court-martial” for “military judge” the second place it appeared, could not be executed because of the prior amendment by Pub. L. 115-91, § 531(d)(2). See below.

Pub. L. 115-91, § 531(d)(2), substituted “shall bind the parties and the court-martial” for “shall bind the parties and the military judge”.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 531(d) of 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 531(p) of Pub. L. 115-91, set out as a note under section 801 of this title.

Amendment by section 1081(c)(1)(H) of 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

Section 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. 13825, set out as notes under section 801 of this title.

### § 854. Art. 54. Record of trial

(a) GENERAL AND SPECIAL COURTS-MARTIAL.—Each general or special court-martial shall keep a separate record of the proceedings in each case brought before it. The record shall be certified by a court-reporter, except that in the case of death, disability, or absence of a court reporter, the record shall be certified by an official selected as the President may prescribe by regulation.

(b) SUMMARY COURTS-MARTIAL.—Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be certified in the manner required by such regulations as the President may prescribe.

(c) CONTENTS OF RECORD.—(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation.

(2) In accordance with regulations prescribed by the President, a complete record of proceedings and testimony shall be prepared in any case of a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(d) COPY TO ACCUSED.—A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is certified.

(e) COPY TO VICTIM.—In the case of a general or special court-martial, upon request, a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are certified. The victim shall be notified of the opportunity to receive the records of the proceedings.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90-632, § 2(23), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98-209, § 6(c), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 106-398, § 1 [[div. A], title V, § 555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127; Pub. L. 112-81, div. A, title V, § 586(e), Dec. 31, 2011, 125 Stat. 1435; Pub. L. 114-328, div. E, title LVII, § 5238, Dec. 23, 2016, 130 Stat. 2918.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
854(a) .....	50:629(a).	May 5, 1950, ch. 169, § 1 (Art. 54), 64 Stat. 125.
854(b) .....	50:629(b).	
854(c) .....	50:629(c).	

In subsection (a), the word “If” is substituted for the words “In case”. The words “any of those” are substituted for the word “such” in the last sentence.

In subsection (b), the words “and the” are substituted for the word “which” before the word “record”. The words “the matter and shall be authenticated in the manner required by such regulations as” are substituted for the words “such matter and be authenticated in such manner as may be required by regulations which”.

In subsection (c), the words “it is” are inserted before the word “authenticated”.

#### AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5238(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.”