

(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.”

Subsec. (b). Pub. L. 114-328, §5238(2), substituted "SUMMARY COURTS-MARTIAL.—Each summary court-martial" for "Each special and summary court-martial" and "certified" for "authenticated".

Subsec. (c). Pub. L. 114-328, §5238(3), added subsec. (c) and struck out former subsec. (c) which related to preparation of complete record of proceedings.

Subsec. (d). Pub. L. 114-328, §5238(4), inserted heading and substituted "certified" for "authenticated".

Subsec. (e). Pub. L. 114-328, §5238(5), inserted heading and substituted ", upon request," for "involving a sexual assault or other offense covered by section 920 of this title (article 120)," and "certified" for "authenticated".

2011—Subsec. (e). Pub. L. 112-81 added subsec. (e).

2000—Subsec. (c)(1)(B). Pub. L. 106-398 inserted ", confinement for more than six months, or forfeiture of pay for more than six months" after "bad-conduct discharge".

1983—Subsec. (a). Pub. L. 98-209, §6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98-209, §6(c)(2), substituted "the record" for "the record shall contain the matter and".

Subsecs. (c), (d). Pub. L. 98-209, §6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a). Pub. L. 90-632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

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 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §555(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-127, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of April 1, 2000, and shall apply with respect to charges referred on or after that date to trial by special court-martial."

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 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.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Sentencing.
856a.	56a.	Repealed.

Sec.	Art.	
857.	57.	Effective date of sentences.
857a.	57a.	Repealed.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

AMENDMENTS

2017—Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, made technical amendment to Pub. L. 114-328, §5541(5). See 2016 Amendment note below.

Pub. L. 115-91, div. A, title V, §531(f)(3), Dec. 12, 2017, 131 Stat. 1385, added item 858a and struck out former item 858a "Sentences: reduction in enlisted grade upon approval".

2016—Pub. L. 114-328, div. E, title LXIII, §5541(5), Dec. 23, 2016, 130 Stat. 2966, as amended by Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, substituted "Sentencing" for "Maximum and minimum limits" in item 856 and struck out items 856a "Art. 56a. Sentence of confinement for life without eligibility for parole" and 857a "Art. 57a. Deferment of sentences".

2013—Pub. L. 113-66, div. A, title XVII, §1705(a)(2)(B), Dec. 26, 2013, 127 Stat. 959, substituted "Maximum and minimum limits" for "Maximum limits" in item 856.

1997—Pub. L. 105-85, div. A, title V, §581(a)(2), Nov. 18, 1997, 111 Stat. 1760, added item 856a.

1996—Pub. L. 104-106, div. A, title XI, §§1122(a)(2), 1123(b), Feb. 10, 1996, 110 Stat. 463, 464, added items 857a and 858b.

1960—Pub. L. 86-633, §1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
855	50:636.	May 5, 1950, ch. 169, §1 (Art. 55), 64 Stat. 126.

The word "may" is substituted for the word "shall".

§ 856. Art. 56. Sentencing

(a) SENTENCE MAXIMUMS.—The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(b) SENTENCE MINIMUMS FOR CERTAIN OFFENSES.—(1) Except as provided in subsection (d) of section 853a of this title (article 53a), punishment for any offense specified in paragraph (2) shall include dismissal or dishonorable discharge, as applicable.

(2) The offenses referred to in paragraph (1) are as follows:

(A) Rape under subsection (a) of section 920 of this title (article 120).

(B) Sexual assault under subsection (b) of such section (article).

(C) Rape of a child under subsection (a) of section 920b of this title (article 120b).