

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).

(D) Sexual assault of a child under subsection (b) of such section (article).

(E) An attempt to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 880 of this title (article 80).

(F) Conspiracy to commit an offense specified in subparagraph (A), (B), (C), or (D) that is punishable under section 881 of this title (article 81).

(c) IMPOSITION OF SENTENCE.—

(1) IN GENERAL.—In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces, taking into consideration—

(A) the nature and circumstances of the offense and the history and characteristics of the accused;

(B) the impact of the offense on—

(i) the financial, social, psychological, or medical well-being of any victim of the offense; and

(ii) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(C) the need for the sentence—

(i) to reflect the seriousness of the offense;

(ii) to promote respect for the law;

(iii) to provide just punishment for the offense;

(iv) to promote adequate deterrence of misconduct;

(v) to protect others from further crimes by the accused;

(vi) to rehabilitate the accused; and

(vii) to provide, in appropriate cases, the opportunity for retraining and return to duty to meet the needs of the service; and

(D) the sentences available under this chapter.

(2) SENTENCING BY MILITARY JUDGE.—In announcing the sentence in a general or special court-martial in which the accused is sentenced by a military judge alone under section 853 of this title (article 53), the military judge shall, with respect to each offense of which the accused is found guilty, specify the term of confinement, if any, and the amount of the fine, if any. If the accused is sentenced to confinement for more than one offense, the military judge shall specify whether the terms of confinement are to run consecutively or concurrently.

(3) SENTENCING BY MEMBERS.—In a general or special court-martial in which the accused has elected sentencing by members, the court-martial shall announce a single sentence for all of the offenses of which the accused was found guilty.

(4) SENTENCE OF CONFINEMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE.—(A) If an offense is subject to a sentence of confinement for life, a court-martial may impose a sentence of confinement for life without eligibility for parole.

(B) An accused who is sentenced to confinement for life without eligibility for parole

shall be confined for the remainder of the accused's life unless—

(i) the sentence is set aside or otherwise modified as a result of—

(I) action taken by the convening authority or the Secretary concerned; or

(II) any other action taken during post-trial procedure and review under any other provision of subchapter IX of this chapter;

(ii) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(iii) the accused is pardoned.

(d) APPEAL OF SENTENCE BY THE UNITED STATES.—(1) With the approval of the Judge Advocate General concerned, and consistent with standards and procedures set forth in regulations prescribed by the President, the Government may appeal a sentence to the Court of Criminal Appeals, on the grounds that—

(A) the sentence violates the law; or

(B) the sentence is plainly unreasonable, as determined in accordance with standards and procedures prescribed by the President.

(2) An appeal under this subsection must be filed within 60 days after the date on which the judgment of a court-martial is entered into the record under section 860c of this title (article 60c).

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 113-66, div. A, title XVII, §1702(a)(1), (2)(A), Dec. 26, 2013, 127 Stat. 959; Pub. L. 114-328, div. E, title LVIII, §5301(a), Dec. 23, 2016, 130 Stat. 2919; Pub. L. 115-91, div. A, title V, §531(e), Dec. 12, 2017, 131 Stat. 1385.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
856	50:637.	May 5, 1950, ch. 169, §1 (Art. 56), 64 Stat. 126.

The word “may” is substituted for the word “shall”.

AMENDMENTS

2017—Subsec. (d)(1). Pub. L. 115-91, §531(e)(1), inserted “and consistent with standards and procedures set forth in regulations prescribed by the President,” after “concerned,” in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 115-91, §531(e)(2), inserted “, as determined in accordance with standards and procedures prescribed by the President” before period at end.

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to maximum and minimum sentencing limits.

2013—Pub. L. 113-66 substituted “Maximum and minimum limits” for “Maximum limits” in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

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 531(p) 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 implement-

ing 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 180 days after Dec. 26, 2013, and applicable to offenses specified in subsec. (b)(2) of this section committed on or after that date, see section 1705(c) of Pub. L. 113-66, set out as a note under section 818 of this title.

[§ 856a. Repealed. Pub. L. 114-328, div. E, title LVIII, § 5301(b), Dec. 23, 2016, 130 Stat. 2920]

Section, added Pub. L. 105-85, div. A, title V, § 581(a)(1), Nov. 18, 1997, 111 Stat. 1759, related to sentence of confinement for life without eligibility for parole.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 857. Art. 57. Effective date of sentences

(a) EXECUTION OF SENTENCES.—A court-martial sentence shall be executed and take effect as follows:

(1) FORFEITURE AND REDUCTION.—A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(2) CONFINEMENT.—Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(3) APPROVAL OF SENTENCE OF DEATH.—If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as the President sees fit. That part of the sentence providing for death may not be suspended.

(4) APPROVAL OF DISMISSAL.—If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as the Secretary sees fit. In time of war or national emergency he may commute a sentence of dismissal to re-

duction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(5) COMPLETION OF APPELLATE REVIEW.—If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may be executed, in accordance with service regulations, after completion of appellate review (and, with respect to death or dismissal, approval under paragraph (3) or (4), as appropriate).

(6) OTHER SENTENCES.—Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

(b) DEFERRAL OF SENTENCES.—

(1) IN GENERAL.—On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(2) DEFERRAL OF CERTAIN PERSONS SENTENCED TO CONFINEMENT.—In any case in which a court-martial sentence a person referred to in paragraph (3) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(3) COVERED PERSONS.—Paragraph (2) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(4) STATE DEFINED.—In this subsection, the term “State” includes the District of Columbia and any Commonwealth, territory, or possession of the United States.

(5) DEFERRAL WHILE REVIEW PENDING.—In any case in which a court-martial sentence a person to confinement, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.