

stituted for the word “respectively”, since the prescribed action is alternative, not distributive.

## AMENDMENTS

2016—Pub. L. 114-328 substituted “three years after the date of the entry of judgment under section 860c of this title (article 60c)” for “two years after approval by the convening authority of a court-martial sentence”.

1994—Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” and “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1968—Pub. L. 90-632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

## EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2016, 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 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90-632, set out as a note under section 801 of this title.

## § 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 106-398, § 1 [[div. A], title V, § 553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125; Pub. L. 107-107, div. A, title X, § 1048(a)(8), Dec. 28, 2001, 115 Stat. 1223.)

## HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
874(a) .....	50:661(a).	May 5, 1950, ch. 169, § 1
874(b) .....	50:661(b).	(Art. 74), 64 Stat. 132.

In subsections (a) and (b), the words “Secretary concerned” are substituted for the words “Secretary of the Department”.

## AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107 inserted “that is adjudged for an offense committed after October 29, 2000” after “a sentence of confinement for life without eligibility for parole”.

2000—Subsec. (a). Pub. L. 106-398 inserted at end “However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.”

## EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, § 1 [[div. A], title V, § 553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125, provided that: “The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000].”

## § 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) The President shall prescribe regulations, with such limitations as the President considers appropriate, governing eligibility for pay and allowances for the period after the date on which an executed part of a court-martial sentence is set aside.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114-328, div. E, title LIX, § 5337, Dec. 23, 2016, 130 Stat. 2937.)

## HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
875(a) .....	50:662(a).	May 5, 1950, ch. 169, § 1
875(b) .....	50:662(b).	(Art. 75), 64 Stat. 132.
875(c) .....	50:662(c).	

In subsections (b) and (c), the word “If” is substituted for the word “Where”. The word “imposed” is substituted for the word “sustained”. The words “Secretary concerned” are substituted for the words “Secretary of the Department”.

In subsection (c), the word “issue” is substituted for the word “issuance”. The word “commissioned” is inserted for clarity. The words “grade and with such rank” are substituted for the words “rank and precedence”, since a person is appointed to a grade, not a position of precedence, and the word “rank” is the accepted military word denoting the general idea of precedence. The words “the existence of a” are substituted for the word “position”. The word “receive” is omitted as surplusage.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114-328 added subsec. (d).

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.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2(b) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

**§ 876. Art. 76. Finality of proceedings, findings, and sentences**

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
876 .....	50:663.	May 5, 1950, ch. 169, §1 (Art. 76), 64 Stat. 132.

The word “under” is substituted for the words “pursuant to”. The word “are” is substituted for the words “shall be”. The words “Secretary concerned” are substituted for the words “Secretary of a Department”.

**§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions**

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date of the entry of judgment under section 860c of this

title (article 60c) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97-81, §2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98-209, §5(g), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 114-328, div. E, title LIX, § 5338, Dec. 23, 2016, 130 Stat. 2937.)

AMENDMENTS

2016—Pub. L. 114-328 struck out “, as approved under section 860 of this title (article 60),” after “if the sentence” and substituted “of the entry of judgment under section 860c of this title (article 60c)” for “on which the sentence is approved under section 860 of this title (article 60)”.

1983—Pub. L. 98-209 substituted “under section 860 of this title (article 60)” for “under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction” and “by the officer exercising general court-martial jurisdiction”, respectively.

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 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

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97-81, set out as a note under section 706 of this title.

**§ 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment**

(a) PERSONS INCOMPETENT TO STAND TRIAL.— (1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person’s men-