

In subsection (c), the word “must” is substituted for the word “shall” in clause (2), since a condition is prescribed, not a command. The words “United States” are substituted for the word “Government”.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, §5234(1), struck out “, and by members of a court-martial without a military judge upon questions of challenge,” after “on the sentence”.

Subsec. (b). Pub. L. 114-328, §5234(2), struck out “and, except for questions of challenge, the president of a court-martial without a military judge” after “The military judge” and substituted “is final and constitutes the ruling of the court, except that the military judge may change a ruling at any time during trial.” for “, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.”

Subsec. (c). Pub. L. 114-328, §5234(3), struck out “or the president of a court-martial without a military judge” after “the military judge” in introductory provisions.

1968—Subsec. (a). Pub. L. 90-632, §2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90-632, §2(21)(B), substituted “military judge” for “law officer” and inserted reference to the military judge’s ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90-632, §2(21)(C), substituted “military judge” for “law officer” and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90-632, §2(21)(D), 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.

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.

**§ 852. Art. 52. Votes required for conviction, sentencing, and other matters**

(a) IN GENERAL.—No person may be convicted of an offense in a general or special court-martial, other than—

(1) after a plea of guilty under section 845(b) of this title (article 45(b));

(2) by a military judge in a court-martial with a military judge alone, under section 816 of this title (article 16); or

(3) in a court-martial with members under section 816 of this title (article 16), by the concurrence of at least three-fourths of the members present when the vote is taken.

(b) LEVEL OF CONCURRENCE REQUIRED.—

(1) IN GENERAL.—Except as provided in subsection (a) and in paragraph (2), all matters to

be decided by members of a general or special court-martial shall be determined by a majority vote, but a reconsideration of a finding of guilty or reconsideration of a sentence, with a view toward decreasing the sentence, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) SENTENCING.—A sentence of death requires (A) a unanimous finding of guilty of an offense in this chapter expressly made punishable by death and (B) a unanimous determination by the members that the sentence for that offense shall include death. All other sentences imposed by members shall be determined by the concurrence of at least three-fourths of the members present when the vote is taken.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90-632, §2(22), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 114-328, div. E, title LVII, §5235, Dec. 23, 2016, 130 Stat. 2916.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
852(a) .....	50:627(a).	May 5, 1950, ch. 169, §1
852(b) .....	50:627(b).	(Art. 52), 64 Stat. 125.
852(c) .....	50:627(c).	

In subsections (a) and (b), the word “may” is substituted for the word “shall”.

In subsection (b)(2), the words “for more than” are substituted for the words “in excess of”.

In subsection (c), the word “disqualifies” is substituted for the words “shall disqualify”. The word “is” is substituted for the words “shall be” in the last two sentences.

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.