

§ 972. Members: effect of time lost

(a) ENLISTED MEMBERS REQUIRED TO MAKE UP TIME LOST.—An enlisted member of an armed force who—

- (1) deserts;
- (2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;
- (3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or
- (4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

(b) OFFICERS NOT ALLOWED SERVICE CREDIT FOR TIME LOST.—In the case of an officer of an armed force who after February 10, 1996—

- (1) deserts;
- (2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;
- (3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or
- (4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

the period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under section 205 of title 37, the officer's length of service.

(c) WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT.—The Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a)(3), or exclusion of a period of confinement in connection with a trial under subsection (b)(3), in a case upon the occurrence of any of the following events:

- (1) For each charge—
 - (A) the charge is dismissed before or during trial in a final disposition of the charge; or
 - (B) the trial results in an acquittal of the charge.
- (2) For each charge resulting in a conviction in such trial—
 - (A) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or
 - (B) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.

(Added Pub. L. 85-861, §1(20), Sept. 2, 1958, 72 Stat. 1443; amended Pub. L. 104-106, div. A, title

V, § 561(a)-(c)(1), Feb. 10, 1996, 110 Stat. 321, 322; Pub. L. 105-85, div. A, title X, §1073(a)(14), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 108-375, div. A, title V, § 572, Oct. 28, 2004, 118 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
972	10 App.:629a. 34 App.:183b.	July 24, 1956, ch. 692, §1, 70 Stat. 631.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-375 added subsec. (c).
1997—Subsec. (b). Pub. L. 105-85 substituted "February 10, 1996" for "the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996" in introductory provisions.

1996—Pub. L. 104-106, § 561(c)(1), substituted "Members: effect of time lost" for "Enlisted members: required to make up time lost" as section catchline.

Pub. L. 104-106, § 561(a), designated existing provisions as subsec. (a), inserted heading, added par. (3), redesignated par. (5) as (4), struck out former pars. (3) and (4), and added subsec. (b). Prior to amendment, subsec. (a)(3) and (4) read as follows:

"(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

"(4) is confined for more than one day under a sentence that has become final; or".

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title V, § 561(e), Feb. 10, 1996, 110 Stat. 323, provided that: "The amendments made by this section [enacting section 6328 of this title and amending this section and sections 1405, 3925, 3926, 8925, and 8926 of this title] shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any period of time covered by section 972 of title 10, United States Code, that occurs after that date."

§ 973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

- (i) that is an elective office;
- (ii) that requires an appointment by the President by and with the advice and consent of the Senate; or
- (iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil of-

fice in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies by reason of subparagraph (A) of paragraph (1) may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State (or of any political subdivision of a State).

(4)(A) An officer to whom this subsection applies by reason of subparagraph (B) or (C) of paragraph (1) may not hold, by election or appointment, a civil office in the government of a State (or of any political subdivision of a State) if the holding of such office while this subsection so applies to the officer—

(i) is prohibited under the laws of that State; or

(ii) as determined by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, interferes with the performance of the officer's duties as an officer of the armed forces.

(B) Except as otherwise authorized by law, while an officer referred to in subparagraph (A) is serving on active duty, the officer may not exercise the functions of a civil office held by the officer as described in that subparagraph.

(5) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(6) In this subsection, the term "State" includes the District of Columbia and a territory, possession, or commonwealth of the United States.

(c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

(d) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(Added Pub. L. 90-235, §4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 96-513, title I, §116, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 98-94, title X, §1002(a), Sept. 24, 1983, 97 Stat. 655; Pub. L. 101-510, div. A, title V, §556, Nov. 5, 1990, 104 Stat. 1570; Pub. L. 106-65, div. A, title V, §506, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-136, div. A, title V, §545, Nov. 24, 2003, 117 Stat. 1479.)

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108-136, §545(2), inserted "by reason of subparagraph (A) of paragraph (1)" after "applies" and substituted "(or of any political subdivision of a State)" for "the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government)".

Subsec. (b)(4), (5). Pub. L. 108-136, §545(1), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(6). Pub. L. 108-136, §545(4), added par. (6).
2002—Subsec. (d). Pub. L. 107-296 substituted "of Homeland Security" for "of Transportation".

1999—Subsec. (b)(1)(B), (C). Pub. L. 106-65 substituted "270 days" for "180 days".

1990—Subsecs. (c), (d). Pub. L. 101-510 added subsec. (c) and redesignated former subsec. (c) as (d).

1983—Subsec. (b). Pub. L. 98-94 amended subsec. (b) generally. Prior to amendment subsec. (b) provided that, except as otherwise provided by law, no regular officer of an armed force on active duty could hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State, and that acceptance of such a civil office or the exercise of its functions by such an officer terminated his military appointment.

Subsec. (c). Pub. L. 98-94 added subsec. (c).

1980—Pub. L. 96-513, §116(c), substituted "officers on active duty" for "regular officers" in section catchline.

Subsec. (a). Pub. L. 96-513, §116(a), substituted "of an armed force on active duty" for "on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard".

Subsec. (b). Pub. L. 96-513, §116(b), substituted "regular officer of an armed force on active duty" for "on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

CONSTRUCTION AND APPLICABILITY OF SECTION 973(b)

Pub. L. 98-94, title X, §1002(b), (c), Sept. 24, 1983, 97 Stat. 655, 656, provided that:

"(b) Nothing in section 973(b) of title 10, United States Code, as in effect before the date of the enactment of this Act [Sept. 24, 1983], shall be construed—

"(1) to invalidate any action undertaken by an officer of an Armed Force in furtherance of assigned official duties; or

"(2) to have terminated the military appointment of an officer of an Armed Force by reason of the acceptance of a civil office, or the exercise of its functions, by that officer in furtherance of assigned official duties.

"(c) Nothing in section 973(b)(3) of title 10, United States Code, as added by subsection (a), shall preclude a Reserve officer to whom such section applies from holding or exercising the functions of an office described in such section for the term to which the Reserve officer was elected or appointed if, before the date of the enactment of this Act [Sept. 24, 1983], the Reserve officer accepted appointment or election to that office in accordance with the laws and regulations in effect at the time of such appointment or election."

§ 974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians

(a) MILITARY MUSICIANS PERFORMING IN AN OFFICIAL CAPACITY.—(1) A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not engage in the performance of music in competition with local civilian musicians.

(2) For purposes of paragraph (1), the following shall, except as provided in paragraph (3), be in-