

Pub. L. 90-632, set out as a note under section 801 of this title.

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military appellate judge, military judge, or military magistrate to perform the duties of the position involved. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 101-189, div. A, title XIII, §1303, Nov. 29, 1989, 103 Stat. 1576; amended Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 114-328, div. E, title LI, §5104, Dec. 23, 2016, 130 Stat. 2895.)

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328 substituted “military appellate judge, military judge, or military magistrate to perform the duties of the position involved.” for “military judge or military appellate judge to perform the duties of the judge’s position.”

1999—Subsec. (b). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (b). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

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.

§ 806b. Art. 6b. Rights of the victim of an offense under this chapter

(a) RIGHTS OF A VICTIM OF AN OFFENSE UNDER THIS CHAPTER.—A victim of an offense under this chapter has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.

(C) A court-martial relating to the offense.

(D) A post-trial motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused.

(E) A public proceeding of the service clemency and parole board relating to the offense.

(F) The release or escape of the accused, unless such notice may endanger the safety of any person.

(3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or preliminary hearing officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.

(4) The right to be reasonably heard at any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A sentencing hearing relating to the offense.

(C) A public proceeding of the service clemency and parole board relating to the offense.

(5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).

(6) The right to receive restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.

(b) VICTIM OF AN OFFENSE UNDER THIS CHAPTER DEFINED.—In this section, the term “victim of an offense under this chapter” means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter.

(c) APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS FOR CERTAIN VICTIMS.—In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim’s estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section. However, in no event may the individual so designated be the accused.

(d) RULE OF CONSTRUCTION.—Nothing in this section (article) shall be construed—

(1) to authorize a cause of action for damages;

(2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages; or

(3) to impair the exercise of discretion under sections 830 and 834 of this title (articles 30 and 34).

(e) ENFORCEMENT BY COURT OF CRIMINAL APPEALS.—(1) If the victim of an offense under this chapter believes that a preliminary hearing rul-

ing under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

(3)(A) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, subject to section 830a of this title (article 30a).

(B) To the extent practicable, a petition for a writ of mandamus described in this subsection shall have priority over all other proceedings before the Court of Criminal Appeals.

(C) Review of any decision of the Court of Criminal Appeals on a petition for a writ of mandamus described in this subsection shall have priority in the Court of Appeals for the Armed Forces, as determined under the rules of the Court of Appeals for the Armed Forces.

(4) Paragraph (1) applies with respect to the protections afforded by the following:

(A) This section (article).

(B) Section 832 (article 32) of this title.

(C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(f) COUNSEL FOR ACCUSED INTERVIEW OF VICTIM OF ALLEGED OFFENSE.—(1) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of an offense under this chapter who counsel for the Government intends to call as a witness at a proceeding under this chapter, counsel for the accused shall make any request to interview the victim through the Special Victims' Counsel or other counsel for the victim, if applicable.

(2) If requested by an alleged victim who is subject to a request for interview under paragraph (1), any interview of the victim by counsel for the accused shall take place only in the presence of the counsel for the Government, a counsel for the victim, or, if applicable, a victim advocate.

(Added Pub. L. 113-66, div. A, title XVII, §1701(a)(1), Dec. 26, 2013, 127 Stat. 952; amended Pub. L. 113-291, div. A, title V, §§ 531(f), 535, Dec. 19, 2014, 128 Stat. 3364, 3368; Pub. L. 114-92, div. A, title V, § 531, Nov. 25, 2015, 129 Stat. 814; Pub. L. 114-328, div. E, title LI, § 5105, title LVI, § 5203(e)(1), Dec. 23, 2016, 130 Stat. 2895, 2906; Pub. L. 115-91, div. A, title V, § 531(a), title X, § 1081(a)(22), (c)(1)(B), Dec. 12, 2017, 131 Stat. 1384, 1595, 1597; Pub. L. 116-283, div. A, title V, § 541, Jan. 1, 2021, 134 Stat. 3611.)

AMENDMENTS

2021—Subsec. (a)(2)(D) to (F). Pub. L. 116-283 added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

2017—Subsec. (b). Pub. L. 115-91, § 1081(c)(1)(B), which directed striking out “(the Uniform Code of Military Justice)” after “this chapter”, was not executed in light of the prior amendment by section 1081(a)(22) of Pub. L. 115-91, to reflect the probable intent of Congress. See Amendment note below and Effective Date of 2017 Amendment note below.

Pub. L. 115-91, § 1081(a)(22), struck out “(the Uniform Code of Military Justice)” after “this chapter”.

Subsec. (e)(3). Pub. L. 115-91, § 531(a), designated existing provisions as subpar. (A), substituted “prescribed by the President, subject to section 830a of this title (article 30a)” for “prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court”, and added subpars. (B) and (C).

2016—Subsec. (a)(3). Pub. L. 114-328, § 5203(e)(1), substituted “preliminary hearing officer” for “investigating officer”.

Subsec. (c). Pub. L. 114-328, § 5105(a), substituted “the legal guardians of the victim or the representatives of the victim's estate, family members, or any other person designated as suitable by the military judge, may assume the rights of the victim under this section.” for “the military judge shall designate a representative of the estate of the victim, a family member, or another suitable individual to assume the victim's rights under this section.”

Subsec. (d)(3). Pub. L. 114-328, § 5105(b), added par. (3).

Subsec. (f). Pub. L. 114-328, § 5105(c), added subsec. (f).

2015—Subsec. (e). Pub. L. 114-92 amended subsec. (e) generally. Prior to amendment, text read as follows:

“(1) If the victim of an offense under this chapter believes that a court-martial ruling violates the victim's rights afforded by a Military Rule of Evidence specified in paragraph (2), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the court-martial to comply with the Military Rule of Evidence.

“(2) Paragraph (1) applies with respect to the protections afforded by the following:

“(A) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

“(B) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.”

2014—Subsec. (b). Pub. L. 113-291, § 531(f)(1), substituted “an individual” for “a person”.

Subsec. (c). Pub. L. 113-291, § 531(f)(2), in heading, substituted “APPOINTMENT OF INDIVIDUALS TO ASSUME RIGHTS” for “LEGAL GUARDIAN” and, in text, inserted “(but who is not a member of the armed forces)” after “under 18 years of age” and substituted “designate a representative” for “designate a legal guardian from among the representatives”, “another suitable individual” for “other suitable person”, and “the individual” for “the person”.

Subsec. (e). Pub. L. 113-291, § 535, added subsec. (e).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 531(a) 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)(B) 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 OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with imple-

menting 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.

NOTICE TO VICTIMS OF ALLEGED SEXUAL ASSAULT OF PENDENCY OF FURTHER ADMINISTRATIVE ACTION FOLLOWING A DETERMINATION NOT TO REFER TO TRIAL BY COURT-MARTIAL

Pub. L. 116-92, div. A, title V, §549, Dec. 20, 2019, 133 Stat. 1379, provided that: "Under regulations prescribed by the Secretary of Defense, upon a determination not to refer a case of alleged sexual assault for trial by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), the commander making such determination shall periodically notify the victim of the status of a final determination on further action on such case, whether non-judicial punishment under section 815 of such title (article 15 of the Uniform Code of Military Justice), other administrative action, or no further action. Such notifications shall continue not less frequently than monthly until such final determination."

IMPLEMENTATION

Pub. L. 113-66, div. A, title XVII, §1701(b), Dec. 26, 2013, 127 Stat. 953, provided that:

"(1) ISSUANCE.—Not later than one year after the date of the enactment of this Act [Dec. 26, 2013]—

"(A) the Secretary of Defense shall recommend to the President changes to the Manual for Courts-Martial to implement section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), as added by subsection (a); and

"(B) the Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) shall prescribe such regulations as each such Secretary considers appropriate to implement such section.

"(2) MECHANISMS FOR AFFORDING RIGHTS.—The recommendations and regulations required by paragraph (1) shall include the following:

"(A) Mechanisms for ensuring that victims are notified of, and accorded, the rights specified in section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), as added by subsection (a).

"(B) Mechanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense and the Coast Guard make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section.

"(C) Mechanisms for the enforcement of such rights, including mechanisms for application for such rights and for consideration and disposition of applications for such rights.

"(D) The designation of an authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights.

"(E) Disciplinary sanctions for members of the Armed Forces and other personnel of the Department of Defense and Coast Guard who willfully or wantonly fail to comply with requirements relating to such rights."

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Table with 2 columns: Sec. and Art. containing sections 807 through 813.

Table with 2 columns: Sec. and Art. containing section 814.

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(1). See 2016 Amendment note below.

2016—Pub. L. 114-328, div. E, title LXIII, §5541(1), Dec. 23, 2016, 130 Stat. 2965, as amended by Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), Dec. 12, 2017, 131 Stat. 1601, substituted "Restraint of persons charged" for "Restraint of persons charged with offenses" in item 810 and "Prohibition of confinement of members of the armed forces with enemy prisoners and certain others" for "Confinement with enemy prisoners prohibited" in item 812.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large) containing historical notes for sections 807(a), (b), and (c).

In subsection (a), the words "into custody" and "of a person" are transposed.

In subsection (c), the words "All" and "shall" are omitted as surplusage. The word "Commissioned" is inserted before the word "officers" for clarity. The word "therein" is substituted for the words "in the same".

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40; Pub. L. 109-163, div. A, title X, §1057(a)(4), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large) containing historical notes for section 808.

The word "may" is substituted for the words "It shall be lawful for * * * to". The words "a State, Territory, Commonwealth, or possession, or the District of Columbia" are substituted for the words "any State, District, Territory, or possession of the United States". The words "of the United States", before the words "and deliver", are omitted as surplusage. The words