

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section 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. 13825, set out as notes under section 801 of this title.

§ 860c. Art. 60c. Entry of judgment

(a) ENTRY OF JUDGMENT OF GENERAL OR SPECIAL COURT-MARTIAL.—(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60).

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

(i) any post-trial action by the convening authority; or

(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

(2) Under rules prescribed by the President, the judgment under paragraph (1) shall be—

(A) provided to the accused and to any victim of the offense; and

(B) made available to the public.

(b) SUMMARY COURT-MARTIAL JUDGMENT.—The findings and sentence of a summary court-martial, as modified by any post-trial action by the convening authority under section 860b of this title (article 60b), constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the President.

(Added Pub. L. 114-328, div. E, title LIX, § 5324, Dec. 23, 2016, 130 Stat. 2927.)

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§ 861. Art. 61. Waiver of right to appeal; withdrawal of appeal

(a) WAIVER OF RIGHT TO APPEAL.—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appellate review in each case subject to such review under section 866 of this title (article 66). Such a waiver shall be—

(1) signed by the accused and by defense counsel; and

(2) attached to the record of trial.

(b) WITHDRAWAL OF APPEAL.—In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) DEATH PENALTY CASE EXCEPTION.—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

(d) WAIVER OR WITHDRAWAL AS BAR.—A waiver or withdrawal under this section bars review under section 866 of this title (article 66).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, § 5(b)(1), Dec. 6, 1983, 97 Stat. 1397; Pub. L. 114-328, div. E, title LIX, § 5325, Dec. 23, 2016, 130 Stat. 2928.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
861	50:648.	May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127.

The word “each” is substituted for the word “every”.

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to waiver or withdrawal of appeal.

1983—Pub. L. 98-209 amended section generally, substituting “Waiver or withdrawal of appeal” for “Same—General court-martial records” as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

Statutory Notes and Related Subsidiaries

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.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by general or special court-martial, or in a pretrial proceeding under section 830a of this title (article 30a), the United States may appeal the following:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E)

that has previously been issued by appropriate authority.

(G) An order or ruling of the military judge entering a finding of not guilty with respect to a charge or specification following the return of a finding of guilty by the members.

(2)(A) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(B) An appeal of an order or ruling may not be taken when prohibited by section 844 of this title (article 44).

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(d) The United States may appeal a ruling or order of a military magistrate in the same manner as had the ruling or order been made by a military judge, except that the issue shall first be presented to the military judge who designated the military magistrate or to a military judge detailed to hear the issue.

(e) The provisions of this section shall be liberally construed to effect its purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, §5(c)(1), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 103-337, div. A, title IX, §924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XI, §1141(a), Feb. 10, 1996, 110 Stat. 466; Pub. L. 114-328, div. E, title LIX, §5326, Dec. 23, 2016, 130 Stat. 2928; Pub. L. 115-91, div. A, title V, §531(h), Dec. 12, 2017, 131 Stat. 1385.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
862(a)	50:649(a).	May 5, 1950, ch. 169, §1
862(b)	50:649(b).	(Art. 62), 64 Stat. 127.

Editorial Notes

AMENDMENTS

2017—Subsec. (b). Pub. L. 115-91 struck out “, notwithstanding section 866(c) of this title (article 66(c))” after “matters of law”.

2016—Subsec. (a)(1). Pub. L. 114-328, §5326(1)(A), in introductory provisions, substituted “general or special court-martial, or in a pretrial proceeding under section 830a of this title (article 30a), the United States may

appeal the following:” for “court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification):”.

Subsec. (a)(1)(G). Pub. L. 114-328, §5326(1)(B), added subpar. (G).

Subsec. (a)(2). Pub. L. 114-328, §5326(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsecs. (d), (e). Pub. L. 114-328, §5326(3), added subsecs. (d) and (e).

1996—Subsec. (a)(1). Pub. L. 104-106 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.”

1994—Subsec. (b). Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” in two places.

1983—Pub. L. 98-209 amended section generally, substituting “Appeal by the United States” for “Reconsideration and revision” as section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

Statutory Notes and Related Subsidiaries

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 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.

§ 863. Art. 63. Rehearings

(a) Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be adjudged, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.