

In subsection (e), the word “directs” is substituted for the words “shall direct”.

Editorial Notes

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-328 added subsec. (f).
1994—Subsecs. (b) to (d). 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” wherever appearing.

1983—Subsec. (b). Pub. L. 98-209, §10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98-209, §10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90-632 substituted “Court of Military Review” for “board of review” wherever appearing.

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, see section 12(a)(1) of Pub. L. 98-209, set out as a note 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.

[§ 871. Repealed. Pub. L. 114-328, div. E, title LVIII, § 5302(b)(2), Dec. 23, 2016, 130 Stat. 2923]

Section, Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90-632, § 2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98-209, § 5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103-337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 113-66, div. A, title XVII, § 1702(c)(2), Dec. 26, 2013, 127 Stat. 957, related to execution and suspension of various types of sentences.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of

this title (article 27(b)), to conduct the hearing. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer exercising general court-martial jurisdiction vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 857 of this title (article 57). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114-328, div. E, title LIX, § 5335, Dec. 23, 2016, 130 Stat. 2936.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(a)	50:659(a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	
872(c)	50:659(c).	

In subsection (a), the word “Before” is substituted for the words “Prior to”.

In subsection (b), the words “be effective * * * to” are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word “is” is substituted for the words “shall * * * be” in the last sentence. The word “sent” is substituted for the word “forwarded”. The words “Secretary concerned” are substituted for the words “Secretary of the Department”.

Editorial Notes

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5335(a), (b)(1), inserted “The special court-martial convening authority may detail a judge advocate, who is certified under section 827(b) of this title (article 27(b)), to conduct the hearing.” after first sentence and substituted “if the probationer so desires” for “if he so desires” in last sentence.

Subsec. (b). Pub. L. 114-328, § 5335(b)(2), substituted “If the officer exercising general court-martial jurisdiction” for “If he” and “section 857 of this title (article 57)” for “section 871(c) of this title (article 71(c))”.

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.

§ 873. Art. 73. Petition for a new trial

At any time within three years after the date of the entry of judgment under section 860c of this title (article 60c), the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or

fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90-632, §2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114-328, div. E, title LIX, §5336, Dec. 23, 2016, 130 Stat. 2937.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873	50:660.	May 5, 1950, ch. 169, §1 (Art. 73), 64 Stat. 132.

The words "the ground" are substituted for the word "grounds". The words "as the case may be" are substituted for the word "respectively", since the prescribed action is alternative, not distributive.

Editorial Notes

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.

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 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 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

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

Editorial Notes

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."

Statutory Notes and Related Subsidiaries

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 ex-