

istence of a vacancy and shall affect the pro-motion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be consid-ered as actual service for all purposes, including the right to pay and allowances.

(d) The President shall prescribe regulations, with such limitations as the President considers appropriate, governing eligibility for pay and al-lowances for the period after the date on which an executed part of a court-martial sentence is set aside.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 114-328, div. E, title LIX, § 5337, Dec. 23, 2016, 130 Stat. 2937.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
875(a) .....	50:662(a).	May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132.
875(b) .....	50:662(b).	
875(c) .....	50:662(c).	

In subsections (b) and (c), the word “If” is substituted for the word “Where”. The word “imposed” is substituted for the word “sustained”. The words “Sec-retary concerned” are substituted for the words “Sec-retary of the Department”.

In subsection (c), the word “issue” is substituted for the word “issuance”. The word “commissioned” is in-serted for clarity. The words “grade and with such rank” are substituted for the words “rank and prece-dence”, since a person is appointed to a grade, not a po-sition of precedence, and the word “rank” is the ac-cepted military word denoting the general idea of prece-dence. The words “the existence of a” are substituted for the word “position”. The word “receive” is omitted as surplusage.

Editorial Notes

AMENDMENTS

2016—Subsec. (d), Pub. L. 114-328 added subsec. (d).

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 imple-menting regulations and provisions relating to applica-bility 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.

Executive Documents

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2(b) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial pro-vided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, re-viewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial fol-lowing approval, review, or affirmation as re-quired by this chapter, are final and conclusive. Orders publishing the proceedings of courts-mar-

tial and all action taken pursuant to those pro-ceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
876 .....	50:663.	May 5, 1950, ch. 169, § 1 (Art. 76), 64 Stat. 132.

The word “under” is substituted for the words “pur-suant to”. The word “are” is substituted for the words “shall be”. The words “Secretary concerned” are sub-stituted for the words “Secretary of a Department”.

§ 876a. Art. 76a. Leave required to be taken pend-ing review of certain court-martial convic-tions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence includes an unsus-pended dismissal or an unsuspended dishonor-able or bad-conduct discharge. The accused may be required to begin such leave on the date of the entry of judgment under section 860c of this title (article 60c) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is com-pleted or may be terminated at any earlier time.

(Added Pub. L. 97-81, § 2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98-209, § 5(g), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 114-328, div. E, title LIX, § 5338, Dec. 23, 2016, 130 Stat. 2937.)

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328 struck out “, as approved under section 860 of this title (article 60),” after “if the sen-tence” and substituted “of the entry of judgment under section 860c of this title (article 60c)” for “on which the sentence is approved under section 860 of this title (ar-ticle 60)”.

1983—Pub. L. 98-209 substituted “under section 860 of this title (article 60)” for “under section 864 or 865 of this title (article 64 or 65) by the officer exercising gen-eral court-martial jurisdiction” and “by the officer ex-ercising general court-martial jurisdiction”, respec-tively.

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 imple-menting regulations and provisions relating to applica-bility 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 sen-tence 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.

#### EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97-81, set out as a note under section 706 of this title.

#### § 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person

is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added Pub. L. 104-106, div. A, title XI, § 1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)