

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 116-283, div. A, title IX, §924(b)(21)(B), Jan. 1, 2021, 134 Stat. 3824; Pub. L. 117-81, div. A, title V, §534(b), title X, §1081(a)(13), Dec. 27, 2021, 135 Stat. 1696, 1920.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 117-81, div. A, title V, §§ 534(b), 539C, Dec. 27, 2021, 135 Stat. 1696, 1699, provided that, effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability, subsection (b) of this section is amended:

(1) *by striking “If any” and inserting “(1) If any”;* and

(2) *by adding at the end the following new paragraph:*

(2) *A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special court-martial to which charges and specifications were referred by a special trial counsel in accordance with this chapter.*

See 2021 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
823(a)	50:587(a).	May 5, 1950, ch. 169, §1
823(b)	50:587(b).	(Art. 23), 64 Stat. 115.

In subsection (a)(7), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (b), the word “If” is substituted for the word “When”. The words “if considered” are substituted for the words “when deemed”.

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 117-81, §1081(a)(13), inserted comma after “Army”.

Pub. L. 116-283, §924(b)(21)(B)(i), substituted “Air Force or Space Force military installation” for “Air Force base” and “the Air Force, or the Space Force” for “or the Air Force”.

Subsec. (a)(4). Pub. L. 116-283, §924(b)(21)(B)(ii), inserted “or a corresponding unit of the Space Force” after “Air Force”.

Subsec. (b). Pub. L. 117-81, §534(b), designated existing provisions as par. (1) and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 534(b) of Pub. L. 117-81 effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability if regulations are not prescribed by the President before the date that is two years after Dec. 27, 2021, see section 539C of Pub. L. 117-81, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relat-

ing thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 116-283, div. A, title IX, §924(b)(21)(C), Jan. 1, 2021, 134 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
824(a)	50:588(a).	May 5, 1950, ch. 169, §1
824(b)	50:588(b).	(Art. 24), 64 Stat. 116.

In subsection (a)(4), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.

In subsection (b), the words “only one commissioned” are substituted for the words “but one” for clarity. The word “considered” is substituted for the word “deemed”.

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 116-283 inserted “or a corresponding unit of the Space Force” after “Air Force”.

§ 824a. Art 24a. Special trial counsel

(a) DETAIL OF SPECIAL TRIAL COUNSEL.—Each Secretary concerned shall promulgate regulations for the detail of commissioned officers to serve as special trial counsel.

(b) QUALIFICATIONS.—A special trial counsel shall be a commissioned officer who—

(1)(A) is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and

(B) is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by—

(i) the Judge Advocate General of the armed force of which the officer is a member; or

(ii) in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps; and

(2) in the case of a lead special trial counsel appointed pursuant to section 1044f(a)(2) of this title, is in a grade no lower than O-7.

(c) DUTIES AND AUTHORITIES.—

(1) IN GENERAL.—Special trial counsel shall carry out the duties described in this chapter and any other duties prescribed by the Secretary concerned, by regulation.

(2) DETERMINATION OF COVERED OFFENSE; RELATED CHARGES.—

(A) AUTHORITY.—A special trial counsel shall have exclusive authority to determine if a reported offense is a covered offense and shall exercise authority over any such offense in accordance with this chapter. Any determination to prefer or refer charges shall not act to disqualify the special trial counsel as an accuser.

(B) KNOWN AND RELATED OFFENSES.—If a special trial counsel determines that a reported offense is a covered offense, the special trial counsel may also exercise authority over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense.

(3) DISMISSAL; REFERRAL; PLEA BARGAINS.—Subject to paragraph (4), with respect to charges and specifications alleging any offense over which a special trial counsel exercises authority, a special trial counsel shall have exclusive authority to, in accordance with this chapter—

(A) on behalf of the Government, withdraw or dismiss the charges and specifications or make a motion to withdraw or dismiss the charges and specifications;

(B) refer the charges and specifications for trial by a special or general court-martial;

(C) enter into a plea agreement; and

(D) determine if an ordered rehearing is impracticable.

(4) BINDING DETERMINATION.—The determination of a special trial counsel to refer charges and specifications to a court-martial for trial shall be binding on any applicable convening authority for the referral of such charges and specifications.

(5) DEFERRAL TO COMMANDER OR CONVENING AUTHORITY.—If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense or, with respect to charges and specifications for such offense preferred by a person other than a special trial counsel, elects not to refer such charges and specifications, a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such commander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.

(Added Pub. L. 117-81, div. A, title V, §531(a), Dec. 27, 2021, 135 Stat. 1692.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability if regulations are not prescribed by the President before the date that is two years after Dec. 27, 2021, see section 539C of Pub. L. 117-81, set out as an Effective Date of 2021 Amendment note under section 801 of this title.

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member on active duty is eligible to serve on a general or special court-martial for the trial of any other enlisted member.

(2) Before a court-martial with a military judge and members is assembled for trial, an enlisted member who is an accused may personally request, orally on the record or in writing, that—

(A) the membership of the court-martial be comprised entirely of officers; or

(B) enlisted members comprise at least one-third of the membership of the court-martial, regardless of whether enlisted members have been detailed to the court-martial.

(3) Except as provided in paragraph (4), after such a request, the accused may not be tried by a general or special court-martial if the membership of the court-martial is inconsistent with the request.

(4) If, because of physical conditions or military exigencies, a sufficient number of eligible officers or enlisted members, as the case may be, is not available to carry out paragraph (2), the trial may nevertheless be held. In that event, the convening authority shall make a detailed written statement of the reasons for nonavailability. The statement shall be appended to the record.

(d)(1) Except as provided in paragraph (2) for capital offenses, the accused in a court-martial with a military judge and members may, after the findings are announced and before any matter is presented in the sentencing phase, request, orally on the record or in writing, sentencing by members.

(2) In a capital case, the accused shall be sentenced by the members for all offenses for which the court-martial may sentence the accused to death in accordance with section 853(c) of this title (article 53(c)).

(3) In a capital case, if the accused is convicted of a non-capital offense, the accused shall be sentenced for such non-capital offense in accordance with section 853(b) of this title (article 53(b)), regardless of whether the accused is convicted of an offense for which the court-martial may sentence the accused to death.

(e)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any