

(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

member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or as counsel in the same case.

(3) The convening authority shall detail not less than the number of members necessary to impanel the court-martial under section 829 of this title (article 29).

(f) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 90-632, §2(7), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98-209, §§3(b), 13(c), Dec. 6, 1983, 97 Stat. 1394, 1408; Pub. L. 99-661, div. A, title VIII, §803(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 114-328, div. E, title LV, §5182, title LVI, §5203(e)(2), Dec. 23, 2016, 130 Stat. 2899, 2906.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
825(a) .....	50:589(a).	May 5, 1950, ch. 169, §1 (Art. 25), 64 Stat. 116.
825(b) .....	50:589(b).	
825(c) .....	50:589(c).	
825(d) .....	50:589(d).	

In subsection (a), the word “commissioned” is inserted before the word “officer” for clarity. The word “is” is substituted for the words “shall be”.

In subsections (a), (b), and (c)(1), the words “with the armed forces” are omitted as surplusage.

In subsection (b), the word “is” is substituted for the words “shall be”. The words “a commissioned” are substituted for the word “an” for clarity.

In subsection (c), the words “member” and “members”, respectively are substituted for the words “person” and “persons”. The words “of an armed force” are inserted for clarity.

In subsection (c)(1), the word “is” is substituted for the words “shall be”. The word “before” is substituted for the words “prior to”. The words “the accused may not” are substituted for the words “no enlisted person shall”, for clarity. The word “If” is substituted for the word “Where”.

In subsection (c)(2), the word “means” is substituted for the words “shall mean”. The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The word “may” is substituted for the word “shall”. The word “than”, before the words “a body”, is omitted as surplusage.

In subsection (d)(1), the word “may” is substituted for the word “shall”. The word “member” is substituted for the word “person”.

In subsection (d)(2), the word “is” is substituted for the words “shall be”. The word “detail” is substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense. The words “member of an armed force” and “members of the armed forces”, respectively, are substituted for the words “person” and “persons”.

Editorial Notes

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328, §5182(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to service on general and special courts-martial by enlisted members.

Subsec. (d). Pub. L. 114-328, §5182(b)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 114-328, §5182(b)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 114-328, §5203(e)(2), which directed amendment of this section by substituting “preliminary hearing officer” for “investigating officer” in subsec. (d)(2), was executed by making the substitution in subsec. (e)(2) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (e) by Pub. L. 114-328, §5182(b)(1).

Subsec. (e)(3). Pub. L. 114-328, §5182(c), added par. (3).

Subsec. (f). Pub. L. 114-328, §5182(b)(1), redesignated subsec. (e) as (f).

1986—Subsec. (c)(1). Pub. L. 99-661 substituted “has requested orally on the record or in writing” for “has requested in writing”.

1983—Subsec. (c)(2). Pub. L. 98-209, §13(c), struck out “the word” before “unit”.

Subsec. (e). Pub. L. 98-209, §3(b), added subsec. (e).

1968—Subsec. (c)(1). Pub. L. 90-632 inserted requirement that an accused’s request for inclusion of enlisted members on his court-martial be made before conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted “assembled” for “convened” to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

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 1986 AMENDMENT

Pub. L. 99-661, div. A, title VIII, §803(b), Nov. 14, 1986, 100 Stat. 3906, provided that: “The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title.”

Title VIII of Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 3(b) of 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.

§ 825a. Art. 25a. Number of court-martial members in capital cases

(a) IN GENERAL.—In a case in which the accused may be sentenced to death, the number of members shall be 12.