

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

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
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.

(b) CASE NO LONGER CAPITAL.—Subject to section 829 of this title (article 29)—

(1) if a case is referred for trial as a capital case and, before the members are impaneled, the accused may no longer be sentenced to death, the number of members shall be eight; and

(2) if a case is referred for trial as a capital case and, after the members are impaneled, the accused may no longer be sentenced to death, the number of members shall remain 12.

(Added Pub. L. 107–107, div. A, title V, §582(b)(1), Dec. 28, 2001, 115 Stat. 1124; amended Pub. L. 114–328, div. E, title LV, §5183, Dec. 23, 2016, 130 Stat. 2900.)

### Editorial Notes

#### AMENDMENTS

2016—Pub. L. 114–328 amended section generally. Prior to amendment, text read as follows: “In a case in which the accused may be sentenced to a penalty of death, the number of members shall be not less than 12, unless 12 members are not reasonably available because of physical conditions or military exigencies, in which case the convening authority shall specify a lesser number of members not less than five, and the court may be assembled and the trial held with not less than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.”

### 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

Section applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 816 of this title.

### § 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c)(1) In accordance with regulations prescribed under subsection (a), a military judge of a general or special court-martial shall be des-

ignated for detail by the Judge Advocate General of the armed force of which the military judge is a member.

(2) Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to the military judge's performance of duty as a military judge.

(3) A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial—

(A) may perform such duties only when the officer is assigned and directly responsible to the Judge Advocate General of the armed force of which the military judge is a member; and

(B) may perform duties of a judicial or non-judicial nature other than those relating to the officer's primary duty as a military judge of a general court-martial when such duties are assigned to the officer by or with the approval of that Judge Advocate General.

(4) In accordance with regulations prescribed by the President, assignments of military judges under this section (article) shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as preliminary hearing officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge may be detailed under subsection (a) to a court-martial or a proceeding under section 830a of this title (article 30a) that is convened in a different armed force, when so permitted by the Judge Advocate General of the armed force of which the military judge is a member.

(g) In accordance with regulations prescribed by the President, each Judge Advocate General shall designate a chief trial judge from among the members of the applicable trial judiciary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–632, §2(9), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, §3(c)(1), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 114–328, div. E, title LV, §5184, title LVI, §5203(e)(3), Dec. 23, 2016, 130 Stat. 2901, 2906.)

#### HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
826(a) .....	50:590(a).	May 5, 1950, ch. 169, §1 (Art. 26), 64 Stat. 117.
826(b) .....	50:590(b).	

In subsection (a), the words “a commissioned” are substituted for the word “an” for clarity. The words “of the United States” are omitted as surplusage. The word “is” is substituted for the words “shall be”. The word “if” is substituted for the word “when”. 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.

In subsection (b), the word “may” is substituted for the word “shall”.