

**Editorial Notes**

## AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, § 5184(a), inserted “and special” after “each general” and struck out “Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial.” before “The military judge”.

Subsec. (b). Pub. L. 114-328, § 5184(b), substituted “qualified, by reason of education, training, experience, and judicial temperament, for duty” for “qualified for duty”.

Subsec. (c). Pub. L. 114-328, § 5184(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or non-judicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.”

Subsec. (d). Pub. L. 114-328, § 5203(e)(3), substituted “preliminary hearing officer” for “investigating officer”.

Subsec. (f). Pub. L. 114-328, § 5184(d), added subsec. (f).  
Subsec. (g). Pub. L. 114-328, § 5184(e), added subsec. (g).

1983—Subsec. (a). Pub. L. 98-209, § 3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98-209, § 3(c)(1)(B), substituted “in accordance with regulations prescribed under subsection (a). Unless” for “by the convening authority, and, unless”.

1968—Pub. L. 90-632 substituted “military judge” for “law officer” and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90-632 substituted reference to military judge for references to law officer and such law officer’s requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90-632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90-632 redesignated former subsec. (b) as (e) and substituted “military judge” for “law officer” and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

**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 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, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) 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.

## STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Pub. L. 90-632, § 3(a), Oct. 24, 1968, 82 Stat. 1343, provided that: “Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.”

**§ 826a. Art. 26a. Military magistrates**

(a) **QUALIFICATIONS.**—A military magistrate shall be a commissioned officer of the armed forces who—

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

(2) is certified to be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military magistrate by the Judge Advocate General of the armed force of which the officer is a member.

(b) **DUTIES.**—In accordance with regulations prescribed by the Secretary concerned, in addition to duties when designated under section 819 or 830a of this title (article 19 or 30a), a military magistrate may be assigned to perform other duties of a nonjudicial nature.

(Added Pub. L. 114-328, div. E, title LV, § 5185, Dec. 23, 2016, 130 Stat. 2901.)

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section 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. 13825, set out as notes under section 801 of this title.

**§ 827. Art. 27. Detail of trial counsel and defense counsel**

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel, defense counsel, or assistant defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c)(1) Defense counsel and assistant defense counsel detailed for a special court-martial shall have the qualifications set forth in subsection (b).

(2) Trial counsel and assistant trial counsel detailed for a special court-martial and assistant trial counsel detailed for a general court-martial must be determined to be competent to perform such duties by the Judge Advocate General, under such rules as the President may prescribe.

(d) To the greatest extent practicable, in any capital case, at least one defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to such cases. If necessary, this counsel may be a civilian and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90-179, §1(5), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90-632, §2(10), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98-209, §§2(d), 3(c)(2), Dec. 6, 1983, 97 Stat. 1393, 1394; Pub. L. 114-328, div. E, title LV, §5186, Dec. 23, 2016, 130 Stat. 2902; Pub. L. 117-81, div. A, title V, §535, Dec. 27, 2021, 135 Stat. 1696.)

#### AMENDMENT OF SECTION

*Pub. L. 117-81, div. A, title V, §§535, 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, this section is amended by adding at the end the following new subsection:*

*(e) For each general and special court-martial for which charges and specifications were referred by a special trial counsel—*

*(1) a special trial counsel shall be detailed as trial counsel; and*

*(2) a special trial counsel may detail other trial counsel as necessary who are judge advocates.*

*See 2021 Amendment note below.*

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
827(a) .....	50:591(a).	May 5, 1950, ch. 169, §1 (Art. 27), 64 Stat. 117.
827(b) .....	50:591(b).	
827(c) .....	50:591(c).	

The words, “detail” and “detailed” are substituted for the words “appoint” and “appointed” throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word “and” is substituted for the words “together with”. The word “considers” is substituted for the word “deems”. The words “necessary or” are omitted as surplusage, since what is necessary is also appropriate. The word “may” is substituted for the word “shall”. The word “later” is substituted for the word “subsequently”.

In subsections (b) and (c), the word “must” is substituted for the word “shall”, since the clauses prescribe conditions and not commands.

In subsection (b), the word “for” is substituted for the words “in the case of”. The words “person \* \* \* a person who is” are omitted as surplusage.

#### Editorial Notes

##### AMENDMENTS

2021—Subsec. (e). Pub. L. 117-81 added subsec. (e).

2016—Subsec. (a)(2). Pub. L. 114-328, §5186(1), substituted “No person who, with respect to a case, has served as a preliminary hearing officer, court member, military judge, military magistrate, or appellate judge, may later serve as trial counsel,” for “No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel.”

Subsec. (b). Pub. L. 114-328, §5186(2), substituted “Trial counsel, defense counsel, or assistant defense counsel” for “Trial counsel or defense counsel” in introductory provisions.

Subsecs. (c), (d). Pub. L. 114-328, §5186(3), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: “In the case of a special court-martial—

“(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

“(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

“(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.”

1983—Subsec. (a)(1). Pub. L. 98-209, §3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who

are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98-209, §3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted “assistant or associate defense counsel” for “assistant defense counsel”.

Subsec. (b)(1). Pub. L. 98-209, §2(d)(1), substituted “judge advocate” for “judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard.”

Subsec. (c)(3). Pub. L. 98-209, §2(d)(2), struck out “, or a law specialist,” after “is a judge advocate”.

1968—Subsec. (a). Pub. L. 90-632, §2(10)(A), substituted “military judge” for “law officer”.

Subsec. (c). Pub. L. 90-632, §2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90-179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by 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.

#### 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, but amendment by section 3(c)(2) of Pub. L. 98-209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) 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.

#### MILITARY DEFENSE COUNSEL

Pub. L. 117-81, div. A, title V, §549D, Dec. 27, 2021, 135 Stat. 1726, provided that: “Each Secretary of a military department shall—

“(1) ensure that military defense counsel have timely and reliable access to and funding for defense investigators, expert witnesses, trial support, pre-trial and post-trial support, paralegal support, counsel travel, and other necessary resources;

“(2) ensure that military defense counsel detailed to represent a member of the Armed Forces accused of a covered offense (as defined in section 801(17) of title 10, United States Code (article 1(17) of the Uniform Code of Military Justice), as added by section 533 of this Act) are well-trained and experienced, highly skilled, and competent in the defense of cases involving covered offenses; and

“(3) take or direct such other actions regarding military defense counsel as may be warranted in the interest of the fair administration of justice.”

#### EFFECTIVE PROSECUTION AND DEFENSE IN COURTS-MARTIAL AND PILOT PROGRAMS ON PROFESSIONAL MILITARY JUSTICE DEVELOPMENT FOR JUDGE ADVOCATES

Pub. L. 114-328, div. A, title V, §542, Dec. 23, 2016, 130 Stat. 2126, as amended by Pub. L. 115-91, div. A, title V, §532, Dec. 12, 2017, 131 Stat. 1388, provided that:

“(a) PROGRAM FOR EFFECTIVE PROSECUTION AND DEFENSE.—The Secretary concerned shall carry out a program to ensure that—

“(1) trial counsel and defense counsel detailed to prosecute or defend a court-martial have sufficient experience and knowledge to effectively prosecute or defend the case or there is adequate supervision and oversight of trial counsel and defense counsel so detailed to ensure effective prosecution and defense in the court-martial; and

“(2) a deliberate professional developmental process is in place to ensure effective prosecution and defense in all courts-martial.

“(b) MILITARY JUSTICE EXPERIENCE DESIGNATORS OR SKILL IDENTIFIERS.—The Secretary concerned shall establish and use a system of military justice experience designators or skill identifiers for purposes of identifying judge advocates with skill and experience in military justice proceedings in order to ensure that judge advocates with experience and skills identified through such experience designators or skill identifiers are assigned to develop less experienced judge advocates in the prosecution and defense in courts-martial under a program carried out pursuant to subsection (a).

“(c) USE OF CIVILIAN EMPLOYEES TO ADVISE LESS EXPERIENCED JUDGE ADVOCATES IN PROSECUTION AND DEFENSE.—The Secretary concerned may use highly qualified experts and other civilian employees who are under the jurisdiction of the Secretary concerned, are available, and are experienced in the prosecution or defense of complex criminal cases to provide assistance to, and consult with, less experienced judge advocates throughout the court-martial process.

“(d) PILOT PROGRAMS ON PROFESSIONAL DEVELOPMENTAL PROCESS FOR JUDGE ADVOCATES.—

“(1) PURPOSE.—The Secretary concerned shall carry out a pilot program to assess the feasibility and advisability of a military justice career track for judge advocates under the jurisdiction of the Secretary.

“(2) ADDITIONAL MATTERS.—A pilot program may also assess such other matters related to professional military justice development for judge advocates as the Secretary concerned considers appropriate.

“(3) DURATION.—Each pilot program shall be for a period of five years.

“(4) ELEMENTS.—Each pilot program shall include the following:

“(A) A military justice career track for judge advocates that leads to judge advocates with military justice expertise in the grade of colonel, or in the grade of captain in the case of judge advocates of the Navy.

“(B) The use of skill identifiers to identify judge advocates for participation in the pilot program from among judge advocates having appropriate skill and experience in military justice matters.

“(C) Guidance for promotion boards considering the selection for promotion of officers participating in the pilot program in order to ensure that judge advocates who are participating in the pilot program have the same opportunity for promotion as all other judge advocate officers being considered for promotion by such boards.

“(D) Such other matters as the Secretary concerned considers appropriate.

“(5) REPORT.—Not later than four years after the date of the enactment of this Act [Dec. 23, 2016], the Secretary concerned shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot programs con-

ducted under this section. The report shall include the following:

“(A) A description and assessment of each pilot program.

“(B) Such recommendations as the Secretary considers appropriate in light of the pilot programs, including whether any pilot program should be extended or made permanent.

“(e) SECRETARY CONCERNED DEFINED.—In this section, the term ‘Secretary concerned’ has the meaning given that term in section 101(a)(9) of title 10, United States Code.”

**§ 828. Art. 28. Detail or employment of reporters and interpreters**

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
828 .....	50:592.	May 5, 1950, ch. 169, §1 (Art. 28), 64 Stat. 117.

The words “Secretary concerned” are substituted for the words “Secretary of the Department”. The words, “detail or employ” are substituted for the word “appoint”, since the filling of the position involved is not appointment to an office in the constitutional sense.

**Editorial Notes**

AMENDMENTS

2006—Pub. L. 109-366 inserted last sentence.

**§ 829. Art 29. Assembly and impaneling of members; detail of new members and military judges**

(a) ASSEMBLY.—The military judge shall announce the assembly of a general or special court-martial with members. After such a court-martial is assembled, no member may be absent, unless the member is excused—

- (1) as a result of a challenge;
- (2) under subsection (b)(1)(B); or
- (3) by order of the military judge or the convening authority for disability or other good cause.

(b) IMPANELING.—(1) Under rules prescribed by the President, the military judge of a general or special court-martial with members shall—

- (A) after determination of challenges, impanel the court-martial; and
- (B) excuse the members who, having been assembled, are not impaneled.

(2) In a general court-martial, the military judge shall impanel—

- (A) 12 members in a capital case; and

- (B) eight members in a noncapital case.

(3) In a special court-martial, the military judge shall impanel four members.

(c) ALTERNATE MEMBERS.—In addition to members under subsection (b), the military judge shall impanel alternate members, if the convening authority authorizes alternate members.

(d) DETAIL OF NEW MEMBERS.—(1) If, after members are impaneled, the membership of the court-martial is reduced to—

- (A) fewer than 12 members with respect to a general court-martial in a capital case;
- (B) fewer than six members with respect to a general court-martial in a noncapital case; or
- (C) fewer than four members with respect to a special court-martial;

the trial may not proceed unless the convening authority details new members and, from among the members so detailed, the military judge impanels new members sufficient in number to provide the membership specified in paragraph (2).

(2) The membership referred to in paragraph (1) is as follows:

- (A) 12 members with respect to a general court-martial in a capital case.
- (B) At least six but not more than eight members with respect to a general court-martial in a noncapital case.
- (C) Four members with respect to a special court-martial.

(e) DETAIL OF NEW MILITARY JUDGE.—If the military judge is unable to proceed with the trial because of disability or otherwise, a new military judge shall be detailed to the court-martial.

(f) EVIDENCE.—(1) In the case of new members under subsection (d), the trial may proceed with the new members present after the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new members, the military judge, the accused, and counsel for both sides.

(2) In the case of a new military judge under subsection (e), the trial shall proceed as if no evidence had been introduced, unless the evidence previously introduced is read or, in the case of audiotape, videotape, or similar recording, is played, in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 90-632, §2(11), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98-209, §3(d), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107-107, div. A, title V, §582(c), Dec. 28, 2001, 115 Stat. 1124; Pub. L. 114-328, div. E, title LV, §5187, Dec. 23, 2016, 130 Stat. 2902.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
829(a) .....	50:593(a).	May 5, 1950, ch. 169, §1 (Art. 29), 64 Stat. 117.
829(b) .....	50:593(b).	
829(c) .....	50:593(c).	

In subsections (a), (b), and (c), the word “may” is substituted for the word “shall”.

In subsections (b) and (c), the word “details” is substituted for the word “appoints”, since the filling of