

the position involved is not appointment to an office in the constitutional sense.

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|------|------|--|
| Sec. | Art. |  |
| 835. | 35.  | Service of charges; commencement of trial. |

**Editorial Notes**

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to absent and additional members of a general or special court-martial.

2001—Subsec. (b). Pub. L. 107-107 designated existing provisions as par. (1), substituted “the applicable minimum number of members” for “five members” in two places, and added par. (2).

1983—Subsec. (a). Pub. L. 98-209 substituted “unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause” for “except for physical disability or as a result of a challenge or by order of the convening authority for good cause”.

1968—Subsec. (a). Pub. L. 90-632, §2(11)(A), substituted “court has been assembled for the trial of the accused” for “accused has been arraigned”.

Subsec. (b). Pub. L. 90-632, §2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90-632, §2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90-632, §2(11)(D), 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 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 2001 AMENDMENT

Amendment by Pub. L. 107-107 applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107-107, set out as a note under section 816 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, 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.

**SUBCHAPTER VI—PRE-TRIAL PROCEDURE**

|       |      |  |
|-------|------|--|
| Sec.  | Art. |  |
| 830.  | 30.  | Charges and specifications.  |
| 830a. | 30a. | Proceedings conducted before referral.                                 |
| 831.  | 31.  | Compulsory self-incrimination prohibited.                              |
| 832.  | 32.  | Preliminary hearing required before referral to general court-martial. |
| 833.  | 33.  | Disposition guidance.  |
| 834.  | 34.  | Advice to convening authority before referral for trial.               |

**Editorial Notes**

AMENDMENTS

2019—Pub. L. 116-92, div. A, title V, §531(b)(2), Dec. 20, 2019, 133 Stat. 1359, substituted “Proceedings conducted before referral” for “Certain proceedings conducted before referral” in item 830a.

2017—Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), (C), Dec. 12, 2017, 131 Stat. 1601, amended Pub. L. 114-328, §5541(3). See 2016 Amendment note below.

2016—Pub. L. 114-328, div. E, title LXIII, §5541(3), Dec. 23, 2016, 130 Stat. 2965, as amended by Pub. L. 115-91, div. A, title X, §1081(d)(19)(A), (C), Dec. 12, 2017, 131 Stat. 1601, added item 830a and substituted “Preliminary hearing required before referral to general court-martial” for “Preliminary hearing” in item 832, “Disposition guidance” for “Forwarding of charges” in item 833, “Advice to convening authority before referral for trial” for “Advice of staff judge advocate and reference for trial” in item 834, and “Service of charges; commencement of trial” for “Service of charges” in item 835.

2013—Pub. L. 113-66, div. A, title XVII, §1702(a)(2), Dec. 26, 2013, 127 Stat. 955, substituted “Preliminary hearing” for “Investigation” in item 832.

**§ 830. Art 30. Charges and specifications**

(a) IN GENERAL.—Charges and specifications—

(1) may be preferred only by a person subject to this chapter; and

(2) shall be preferred by presentment in writing, signed under oath before a commissioned officer of the armed forces who is authorized to administer oaths.

(b) REQUIRED CONTENT.—The writing under subsection (a) shall state that—

(1) the signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications; and

(2) the matters set forth in the charges and specifications are true, to the best of the knowledge and belief of the signer.

(c) DUTY OF PROPER AUTHORITY.—When charges and specifications are preferred under subsection (a), the proper authority shall, as soon as practicable—

(1) inform the person accused of the charges and specifications; and

(2) determine what disposition should be made of the charges and specifications in the interest of justice and discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 114-328, div. E, title LVI, §5201, Dec. 23, 2016, 130 Stat. 2904.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large)                        |
|-----------------|--------------------|---|
| 830(a) .....    | 50:601(a).         | May 5, 1950, ch. 169, §1 (Art. 30), 64 Stat. 118. |
| 830(b) .....    | 50:601(b).         |   |

In subsection (a), the word “they” is substituted for the words “the same”. The word “commissioned” is inserted for clarity.

**Editorial Notes**

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows:

“(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

“(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

“(2) that they are true in fact to the best of his knowledge and belief.

“(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.”

#### 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.

##### TIMELY DISPOSITION OF NONPROSECUTABLE SEX-RELATED OFFENSES

Pub. L. 116-92, div. A, title V, § 540C, Dec. 20, 2019, 133 Stat. 1366, provided that:

“(a) **POLICY REQUIRED.**—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall develop and implement a policy to ensure the timely disposition of nonprosecutable sex-related offenses.

“(b) **NONPROSECUTABLE SEX-RELATED OFFENSE DEFINED.**—In this section, the term ‘nonprosecutable sex-related offense’ means an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) that a court-martial convening authority has declined to refer for trial by a general or special court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), due to a determination that there is insufficient evidence to support prosecution of the sex-related offense.”

#### § 830a. Art 30a. Proceedings conducted before referral

(a) **IN GENERAL.**—(1) The President shall prescribe regulations for matters relating to proceedings conducted before referral of charges and specifications to court-martial for trial, including the following:

(A) Pre-referral investigative subpoenas.

(B) Pre-referral warrants or orders for electronic communications.

(C) Pre-referral matters referred by an appellate court.

(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

(E) Pre-referral matters relating to the following:

(i) Pre-trial confinement of an accused.

(ii) The mental capacity or mental responsibility of an accused.

(iii) A request for an individual military counsel.

(2) In addition to the matters specified in paragraph (1), the regulations prescribed under that paragraph shall—

(A) set forth the matters that a military judge may rule upon in such proceedings;

(B) include procedures for the review of such rulings;

(C) include appropriate limitations to ensure that proceedings under this section extend

only to matters that would be subject to consideration by a military judge in a general or special court-martial; and

(D) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.

(3) If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter shall be transferred to the military judge detailed to the court-martial.

(b) **DETAIL OF MILITARY JUDGE.**—The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed to proceedings under subsection (a)(1).

(c) **DISCRETION TO DESIGNATE MAGISTRATE TO PRESIDE.**—In accordance with regulations prescribed by the Secretary concerned, a military judge detailed to a proceeding under subsection (a)(1), other than a proceeding described in subparagraph (B) of that subsection, may designate a military magistrate to preside over the proceeding.

(Added Pub. L. 114-328, div. E, title LVI, § 5202, Dec. 23, 2016, 130 Stat. 2904; amended Pub. L. 115-91, div. A, title V, § 531(b), Dec. 12, 2017, 131 Stat. 1384; Pub. L. 116-92, div. A, title V, § 531(a), (b)(1), Dec. 20, 2019, 133 Stat. 1359.)

#### Editorial Notes

##### AMENDMENTS

2019—Pub. L. 116-92, § 531(b)(1), substituted “Proceedings conducted before referral” for “Certain proceedings conducted before referral” in section catchline.

Subsec. (a)(1), (2). Pub. L. 116-92, § 531(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) Proceedings may be conducted to review, or otherwise act on, the following matters before referral of charges and specifications to court-martial for trial in accordance with regulations prescribed by the President:

“(A) Pre-referral investigative subpoenas.

“(B) Pre-referral warrants or orders for electronic communications.

“(C) Pre-referral matters referred by an appellate court.

“(D) Pre-referral matters under subsection (c) or (e) of section 806b of this title (article 6b).

“(2) The regulations prescribed under paragraph (1) shall—

“(A) include procedures for the review of such rulings that may be ordered under this section as the President considers appropriate; and

“(B) provide such limitations on the relief that may be ordered under this section as the President considers appropriate.”

2017—Subsec. (a)(1). Pub. L. 115-91, § 531(b)(1), inserted “; or otherwise act on,” after “to review” in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 115-91, § 531(b)(2), added subpar. (D).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 effective immediately after this section takes effect as provided for in section 5542 of Pub. L. 114-328 (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115-91, set out as a note under section 801 of this title.