

which related to requirement of preliminary hearing, hearing officer, and report of hearing results, respectively.

Subsec. (d)(1). Pub. L. 114-328, § 5203(b)(1), substituted “this section” for “subsection (a)”.

Subsec. (d)(2). Pub. L. 114-328, § 5203(b)(2), substituted “that is relevant to the issues for determination under subsection (a)(2).” for “in defense and mitigation, relevant to the limited purposes of the hearing, as provided for in paragraph (4) and subsection (a)(2).”

Subsec. (d)(3). Pub. L. 114-328, § 5203(b)(3), inserted at end “A declination under this paragraph shall not serve as the sole basis for ordering a deposition under section 849 of this title (article 49).”

Subsec. (d)(4). Pub. L. 114-328, § 5203(b)(4), substituted “determinations under subsection (a)(2)” for “the limited purposes of the hearing, as provided in subsection (a)(2)”.

Subsec. (e). Pub. L. 114-328, § 5203(c), substituted “under such rules as the President may prescribe” for “as prescribed by the Manual for Courts-Martial”.

Subsec. (g). Pub. L. 114-328, § 5203(d), inserted at end “A defect in a report under subsection (c) is not a basis for relief if the report is in substantial compliance with that subsection.”

2014—Subsec. (a)(1). Pub. L. 113-291 inserted “, unless such hearing is waived by the accused” after “preliminary hearing”.

2013—Pub. L. 113-66 substituted “Preliminary hearing” for “Investigation” in section catchline and amended text generally. Prior to amendment, section provided that no charge or specification may be referred to general court-martial for trial until thorough and impartial investigation of all the matters had been made.

1996—Subsecs. (d), (e). Pub. L. 104-106 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Subsec. (b). Pub. L. 97-81 substituted “The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section” for “Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command”.

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 2013 AMENDMENT

Amendment by Pub. L. 113-66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113-66, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply

with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

§ 833. Art 33. Disposition guidance

The President shall direct the Secretary of Defense to issue, in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy, non-binding guidance regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under sections 830 and 834 of this title (articles 30 and 34). Such guidance shall take into account, with appropriate consideration of military requirements, the principles contained in official guidance of the Attorney General to attorneys for the Government with respect to disposition of Federal criminal cases in accordance with the principle of fair and evenhanded administration of Federal criminal law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 114-328, div. E, title LVI, § 5204, Dec. 23, 2016, 130 Stat. 2906.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
833	50:604.	May 5, 1950, ch. 169, § 1 (Art. 33), 64 Stat. 119.

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.”

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.

§ 834. Art. 34. Advice to convening authority before referral for trial

(a) GENERAL COURT-MARTIAL.—

(1) STAFF JUDGE ADVOCATE ADVICE REQUIRED BEFORE REFERRAL.—Before referral of charges and specifications to a general court-martial for trial, the convening authority shall submit the matter to the staff judge advocate for advice, which the staff judge advocate shall provide to the convening authority in writing. The convening authority may not refer a specification under a charge to a general court-martial unless the staff judge advocate advises the convening authority in writing that—

(A) the specification alleges an offense under this chapter;

(B) there is probable cause to believe that the accused committed the offense charged; and

(C) a court-martial would have jurisdiction over the accused and the offense.

(2) STAFF JUDGE ADVOCATE RECOMMENDATION AS TO DISPOSITION.—Together with the written advice provided under paragraph (1), the staff judge advocate shall provide a written recommendation to the convening authority as to the disposition that should be made of the specification in the interest of justice and discipline.

(3) STAFF JUDGE ADVOCATE ADVICE AND RECOMMENDATION TO ACCOMPANY REFERRAL.—When a convening authority makes a referral for trial by general court-martial, the written advice of the staff judge advocate under paragraph (1) and the written recommendation of the staff judge advocate under paragraph (2) with respect to each specification shall accompany the referral.

(b) SPECIAL COURT-MARTIAL; CONVENING AUTHORITY CONSULTATION WITH JUDGE ADVOCATE.—Before referral of charges and specifications to a special court-martial for trial, the convening authority shall consult a judge advocate on relevant legal issues.

(c) GENERAL AND SPECIAL COURTS-MARTIAL; CORRECTION OF CHARGES AND SPECIFICATIONS BEFORE REFERRAL.—Before referral for trial by general court-martial or special court-martial, changes may be made to charges and specifications—

(1) to correct errors in form; and

(2) when applicable, to conform to the substance of the evidence contained in a report under section 832(c) of this title (article 32(c)).

(d) REFERRAL DEFINED.—In this section, the term “referral” means the order of a convening authority that charges and specifications against an accused be tried by a specified court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 98-209, § 4, Dec. 6, 1983, 97 Stat. 1395; Pub. L. 113-66, div. A, title XVII, § 1702(c)(3)(B), Dec. 26, 2013, 127 Stat. 957; Pub. L. 113-291, div. A, title V, § 531(a)(4)(B), Dec. 19, 2014, 128 Stat. 3363; Pub. L. 114-328, div. E, title LVI, § 5205, Dec. 23, 2016, 130 Stat. 2907; Pub. L. 117-81, div. A, title V, § 537, Dec. 27, 2021, 135 Stat. 1697.)

AMENDMENT OF SECTION

Pub. L. 117-81, div. A, title V, §§ 537, 539C, Dec. 27, 2021, 135 Stat. 1697, 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:

(1) in subsection (a)(1), by striking “Before referral” and inserting “Subject to subsection (c), before referral”;

(2) in subsection (b), by striking “Before referral” and inserting “Subject to subsection (c), before referral”;

(3) by redesignating subsections (c) and (d) as subsections (d) and (e) respectively;

(4) by inserting after subsection (b) the following new subsection:

“(c) COVERED OFFENSES.—A referral to a general or special court-martial for trial of charges and specifications over which a special trial counsel exercises authority may only be made—

“(1) by a special trial counsel, subject to a special trial counsel’s written determination accompanying the referral that—

“(A) each specification under a charge alleges an offense under this chapter;

“(B) there is probable cause to believe that the accused committed the offense charged; and

“(C) a court-martial would have jurisdiction over the accused and the offense; or

“(2) in the case of charges and specifications that do not allege a covered offense and as to which a special trial counsel declines to prefer or, in the case of charges and specifications preferred by a person other than a special trial counsel, refer charges, by the convening authority in accordance with this section.”; and

(5) in subsection (e), as so redesignated, by inserting “or, with respect to charges and specifications over which a special trial counsel exercises authority in accordance with section 824a of this title (article 24a), a special trial counsel,” after “convening authority”.

See 2021 Amendment notes below.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
834(a)	50:605(a).	May 5, 1950, ch. 169, § 1
834(b)	50:605(b).	(Art. 34), 64 Stat. 119.

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

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117-81, § 537(1), substituted “Subject to subsection (c), before referral” for “Before referral” in introductory provisions.

Subsec. (b). Pub. L. 117-81, § 537(2), substituted “Subject to subsection (c), before referral” for “Before referral”.

Subsecs. (c), (d). Pub. L. 117-81, § 537(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 117-81, § 537(5), inserted “or, with respect to charges and specifications over which a special trial counsel exercises authority in accordance with section 824a of this title (article 24a), a special trial counsel,” after “convening authority”.

Pub. L. 117-81, § 537(3), redesignated subsec. (d) as (e). 2016—Pub. L. 114-328 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to reference of charge to staff judge advocate for consideration and advice before trial, written and signed statement of advice by the staff judge advocate, and corrections to charges and specifications, respectively.

2014—Subsec. (a)(2). Pub. L. 113-291 inserted “(if there is such a report)” after “(article 32)”.

2013—Subsec. (a)(2). Pub. L. 113-66 substituted “a preliminary hearing under section 832 of this title (article 32)” for “investigation under section 832 of this title (article 32) (if there is such a report)”.

1983—Subsec. (a). Pub. L. 98-209, § 4(a), substituted “judge advocate” for “judge advocate or legal officer”, and provisions that the convening authority may not refer a specification under a charge to a general court-

martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98-209, §4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

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 2013 AMENDMENT

Amendment by Pub. L. 113-66 effective on the later of Dec. 26, 2014, or the date of the enactment of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Dec. 19, 2014) and applicable with respect to preliminary hearings conducted on or after that effective date, see section 1702(d)(1) of Pub. L. 113-66, set out as a note under section 802 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 apply to any case in which charges were referred to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98-209, set out as a note under section 801 of this title.

REVIEW OF DECISIONS NOT TO REFER CHARGES OF CERTAIN SEX-RELATED OFFENSES FOR TRIAL BY COURT-MARTIAL

Pub. L. 113-66, div. A, title XVII, §1744, Dec. 26, 2013, 127 Stat. 980, as amended by Pub. L. 113-291, div. A, title V, §541, Dec. 19, 2014, 128 Stat. 3371, provided that:

“(a) REVIEW REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense shall require the Secretaries of the military departments to provide for review of decisions not to refer charges for trial by court-martial in cases where a sex-related offense has been alleged by a victim of the alleged offense.

“(2) SPECIFIC REVIEW REQUIREMENTS.—As part of a review conducted pursuant to paragraph (1), the Secretary of a military department shall require that—

“(A) consideration be given to the victim’s statement provided during the course of the criminal investigation regarding the alleged sex-related offense perpetrated against the victim; and

“(B) a determination be made whether the victim’s statement and views concerning disposition of the alleged sex-related offense were considered by

the convening authority in making the referral decision.

“(b) SEX-RELATED OFFENSE DEFINED.—In this section, the term ‘sex-related offense’ means any of the following:

“(1) Rape or sexual assault under subsection (a) or (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice).

“(2) Forcible sodomy under section 925 of such title (article 125 of the Uniform Code of Military Justice).

“(3) An attempt to commit an offense specified in paragraph (1) or (2) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).

“(c) REVIEW OF CERTAIN CASES NOT REFERRED TO COURT-MARTIAL.—

“(1) CASES NOT REFERRED FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION FOR REFERRAL FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file to the Secretary of the military department concerned for review as a superior authority authorized to exercise general court-martial convening authority.

“(2) CASES NOT REFERRED BY CONVENING AUTHORITY UPON REQUEST FOR REVIEW BY CHIEF PROSECUTOR.—

“(A) IN GENERAL.—In any case where a convening authority decides not to refer a charge of a sex-related offense to trial by court-martial, the Secretary of the military department concerned shall review the decision as a superior authority authorized to exercise general court-martial convening authority if the chief prosecutor of the Armed Force concerned, in response to a request by the detailed counsel for the Government, requests review of the decision by the Secretary.

“(B) CHIEF PROSECUTOR DEFINED.—In this paragraph, the term ‘chief prosecutor’ means the chief prosecutor or equivalent position of an Armed Force, or, if an Armed Force does not have a chief prosecutor or equivalent position, such other trial counsel as shall be designated by the Judge Advocate General of that Armed Force, or in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps.

“(d) REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION NOT TO REFER FOR TRIAL.—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense should not be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file for review to the next superior commander authorized to exercise general court-martial convening authority.

“(e) ELEMENTS OF CASE FILE.—A case file forwarded to higher authority for review pursuant to subsection (c) or (d) shall include the following:

“(1) All charges and specifications preferred under section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice).

“(2) All reports of investigations of such charges, including the military criminal investigative organization investigation report and the report prepared under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), as amended by section 1702.

“(3) A certification that the victim of the alleged sex-related offense was notified of the opportunity to express views on the victim’s preferred disposition of the alleged offense for consideration by the convening authority.

“(4) All statements of the victim provided to the military criminal investigative organization and to

the victim's chain of command relating to the alleged sex-related offense and any statement provided by the victim to the convening authority expressing the victim's view on the victim's preferred disposition of the alleged offense.

“(5) The written advice of the staff judge advocate to the convening authority pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice).

“(6) A written statement explaining the reasons for the convening authority's decision not to refer any charges for trial by court-martial.

“(7) A certification that the victim of the alleged sex-related offense was informed of the convening authority's decision to forward the case as provided in subsection (c) or (d).

“(f) NOTICE ON RESULTS OR REVIEW.—The victim of the alleged sex-related offense shall be notified of the results of the review conducted under subsection (c) or (d) in the manner prescribed by the victims and witness assistance program of the Armed Force concerned.

“(g) VICTIM ALLEGATION OF SEX-RELATED OFFENSE.—The Secretary of Defense shall require the Secretaries of the military departments to develop a system to ensure that a victim of a possible sex-related offense under the Uniform Code of Military Justice is given the opportunity to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether or not the victim believes that the offense alleged is a sex-related offense subject to the requirements of this section.”

§ 835. Art. 35. Service of charges; commencement of trial

(a) IN GENERAL.—Trial counsel detailed for a court-martial under section 827 of this title (article 27) shall cause to be served upon the accused a copy of the charges and specifications referred for trial.

(b) COMMENCEMENT OF TRIAL.—(1) Subject to paragraphs (2) and (3), no trial or other proceeding of a general court-martial or a special court-martial (including any session under section 839(a) of this title (article 39(a)) may be held over the objection of the accused—

(A) with respect to a general court-martial, from the time of service through the fifth day after the date of service; or

(B) with respect to a special court-martial, from the time of service through the third day after the date of service.

(2) An objection under paragraph (1) may be raised only at the first session of the trial or other proceeding and only if the first session occurs before the end of the applicable period under paragraph (1)(A) or (1)(B). If the first session occurs before the end of the applicable period, the military judge shall, at that session, inquire as to whether the defense objects under this subsection.

(3) This subsection shall not apply in time of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90-632, §2(12), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 114-328, div. E, title LVI, §5206, Dec. 23, 2016, 130 Stat. 2908.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
835	50:606.	May 5, 1950, ch. 169, §1 (Art. 35), 64 Stat. 119.

The word “may” is substituted for the word “shall”. The word “after” is substituted for the words “subsequent to”.

Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328 amended section generally. Prior to amendment, text read as follows: “The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.”

1968—Pub. L. 90-632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

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 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 VII—TRIAL PROCEDURE

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836.	36.	President may prescribe rules.
837.	37.	Command influence.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
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844.	44.	Former jeopardy.
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846.	46.	Opportunity to obtain witnesses and other evidence in trials by court-martial.
847.	47.	Refusal of person not subject to chapter to appear, testify, or produce evidence.
848.	48.	Contempt.
849.	49.	Depositions.
850.	50.	Admissibility of sworn testimony from records of courts of inquiry.
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Votes required for conviction, sentencing, and other matters.
853.	53.	Findings and sentencing.
853a.	53a.	Plea agreements.
854.	54.	Record of trial.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, div. A, title X, §1081(a)(20), Jan. 1, 2021, 134 Stat. 3871, added item 837 and struck out former item 837 “837. Art. 37. Command influence”.

2019—Pub. L. 116-92, div. A, title V, §532(b), Dec. 20, 2019, 133 Stat. 1361, in item 837 substituted “Art. 37.