

EFFECTIVE DATE OF 1968 AMENDMENT

Amendments 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 872 of this title.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
872(a)	50:659(a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	
872(c)	50:659(c).	

In subsection (a), the word "Before" is substituted for the words "Prior to".

In subsection (b), the words "be effective * * * to" are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word "is" is substituted for the words "shall * * * be" in the last sentence. The word "sent" is substituted for the word "forwarded". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

§ 873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90-632, § 2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873	50:660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words "the ground" are substituted for the word "grounds". The words "as the case may be" are substituted for the word "respectively", since the prescribed action is alternative, not distributive.

AMENDMENTS

1994—Pub. L. 103-337 substituted "Court of Criminal Appeals" for "Court of Military Review" and "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1968—Pub. L. 90-632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90-632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 106-398, § 1 [div. A], title V, § 553(a), Oct. 30, 2000, 114 Stat. 1654, 1654A-125.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
874(a)	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

In subsections (a) and (b), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398 inserted at end "However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [(div. A), title V, §553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-125, provided that: "The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
875(a)	50:662(a).	May 5, 1950, ch. 169, §1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word "If" is substituted for the word "Where". The word "imposed" is substituted for the word "sustained". The words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (c), the word "issue" is substituted for the word "issuance". The word "commissioned" is inserted for clarity. The words "grade and with such rank" are substituted for the words "rank and precedence", since a person is appointed to a grade, not a position of precedence, and the word "rank" is the accepted military word denoting the general idea of precedence. The words "the existence of a" are substituted for the word "position". The word "receive" is omitted as surplusage.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
876	50:663.	May 5, 1950, ch. 169, §1 (Art. 76), 64 Stat. 132.

The word "under" is substituted for the words "pursuant to". The word "are" is substituted for the words "shall be". The words "Secretary concerned" are substituted for the words "Secretary of a Department".

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97-81, §2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98-209, §5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983—Pub. L. 98-209 substituted "under section 860 of this title (article 60)" for "under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction" and "by the officer exercising general court-martial jurisdiction", respectively.

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 the findings and sentence were adjudged by a court-martial before that date, and the 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), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

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EFFECTIVE DATE

Section to take effect at end of 60-day period begin-
ning on Nov. 20, 1981, to apply to each member whose
sentence by court-martial is approved on or after Jan.
20, 1982, under section 864 or 865 of this title by the offi-
cer exercising general court-martial jurisdiction under
the provisions of such section as it existed on the day
before the effective date of the Military Justice Act of
1983 (Pub. L. 98-209), or under section 860 of this title by
the officer empowered to act on the sentence on or
after that effective date, see section 7(a), (b)(1) of Pub.
L. 97-81, set out as a note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 707 of this
title.

§ 876b. Art. 76b. Lack of mental capacity or men- tal responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—

(1) In the case of a person determined under this
chapter to be presently suffering from a mental
disease or defect rendering the person mentally
incompetent to the extent that the person is un-
able to understand the nature of the proceedings
against that person or to conduct or cooperate
intelligently in the defense of the case, the gen-
eral court-martial convening authority for that
person shall commit the person to the custody of
the Attorney General.

(2) The Attorney General shall take action in
accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitaliza-
tion provided for in section 4241(d) of title 18, it
is determined that the committed person's men-
tal condition has not so improved as to permit
the trial to proceed, action shall be taken in ac-
cordance with section 4246 of such title.

(4)(A) When the director of a facility in which
a person is hospitalized pursuant to paragraph
(2) determines that the person has recovered to
such an extent that the person is able to under-
stand the nature of the proceedings against the
person and to conduct or cooperate intelligently
in the defense of the case, the director shall
promptly transmit a notification of that deter-
mination to the Attorney General and to the
general court-martial convening authority for
the person. The director shall send a copy of the
notification to the person's counsel.

(B) Upon receipt of a notification, the general
court-martial convening authority shall
promptly take custody of the person unless the
person covered by the notification is no longer
subject to this chapter. If the person is no longer
subject to this chapter, the Attorney General
shall take any action within the authority of
the Attorney General that the Attorney General
considers appropriate regarding the person.

(C) The director of the facility may retain cus-
tody of the person for not more than 30 days
after transmitting the notifications required by
subparagraph (A).

(5) In the application of section 4246 of title 18
to a case under this subsection, references to the
court that ordered the commitment of a person,
and to the clerk of such court, shall be deemed
to refer to the general court-martial convening
authority for that person. However, if the person
is no longer subject to this chapter at a time
relevant to the application of such section to

the person, the United States district court for
the district where the person is hospitalized or
otherwise may be found shall be considered as
the court that ordered the commitment of the
person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF
LACK OF MENTAL RESPONSIBILITY.—(1) If a person
is found by a court-martial not guilty only by
reason of lack of mental responsibility, the per-
son shall be committed to a suitable facility
until the person is eligible for release in accord-
ance with this section.

(2) The court-martial shall conduct a hearing
on the mental condition in accordance with sub-
section (c) of section 4243 of title 18. Subsections
(b) and (d) of that section shall apply with re-
spect to the hearing.

(3) A report of the results of the hearing shall
be made to the general court-martial convening
authority for the person.

(4) If the court-martial fails to find by the
standard specified in subsection (d) of section
4243 of title 18 that the person's release would
not create a substantial risk of bodily injury to
another person or serious damage of property of
another due to a present mental disease or def-
ect—

(A) the general court-martial convening au-
thority may commit the person to the custody
of the Attorney General; and

(B) the Attorney General shall take action
in accordance with subsection (e) of section
4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243
of title 18 shall apply in the case of a person hos-
pitalized pursuant to paragraph (4)(B), except
that the United States district court for the dis-
trict where the person is hospitalized shall be
considered as the court that ordered the person's
commitment.

(c) GENERAL PROVISIONS.—(1) Except as other-
wise provided in this subsection and subsection
(d)(1), the provisions of section 4247 of title 18
apply in the administration of this section.

(2) In the application of section 4247(d) of title
18 to hearings conducted by a court-martial
under this section or by (or by order of) a gen-
eral court-martial convening authority under
this section, the reference in that section to sec-
tion 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chap-
ter 313 of title 18 referred to in this section
apply according to the provisions of this section
notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in sec-
tion 802 of this title (article 2) terminates while
the person is, pursuant to this section, in the
custody of the Attorney General, hospitalized,
or on conditional release under a prescribed reg-
imen of medical, psychiatric, or psychological
care or treatment, the provisions of this section
establishing requirements and procedures re-
garding a person no longer subject to this chap-
ter shall continue to apply to that person not-
withstanding the change of status.

(Added Pub. L. 104-106, div. A, title XI,
§1133(a)(1), Feb. 10, 1996; 110 Stat. 464.)

EFFECTIVE DATE

Section 1133(c) of Pub. L. 104-106 provided that: "Sec-
tion 876b of title 10, United States Code (article 76b of

the Uniform Code of Military Justice), as added by subsection (a), shall take effect at the end of the six-month period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply with respect to charges referred to courts-martial after the end of that period."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 802 of this title.

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.
877.	77. Principals.
878.	78. Accessory after the fact.
879.	79. Conviction of lesser included offense.
880.	80. Attempts.
881.	81. Conspiracy.
882.	82. Solicitation.
883.	83. Fraudulent enlistment, appointment, or separation.
884.	84. Unlawful enlistment, appointment, or separation.
885.	85. Desertion.
886.	86. Absence without leave.
887.	87. Missing movement.
888.	88. Contempt toward officials.
889.	89. Disrespect toward superior commissioned officer.
890.	90. Assaulting or willfully disobeying superior commissioned officer.
891.	91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
892.	92. Failure to obey order or regulation.
893.	93. Cruelty and maltreatment.
894.	94. Mutiny or sedition.
895.	95. Resistance, flight, breach of arrest, and escape.
896.	96. Releasing prisoner without proper authority.
897.	97. Unlawful detention.
898.	98. Noncompliance with procedural rules.
899.	99. Misbehavior before the enemy.
900.	100. Subordinate compelling surrender.
901.	101. Improper use of countersign.
902.	102. Forcing a safeguard.
903.	103. Captured or abandoned property.
904.	104. Aiding the enemy.
905.	105. Misconduct as prisoner.
906.	106. Spies.
906a.	106a. Espionage.
907.	107. False official statements.
908.	108. Military property of United States—Loss, damage, destruction, or wrongful disposition.
909.	109. Property other than military property of United States—Waste, spoilage, or destruction.
910.	110. Improper hazarding of vessel.
911.	111. Drunken or reckless operation of a vehicle, aircraft, or vessel.
912.	112. Drunk on duty.
912a.	112a. Wrongful use, possession, etc., of controlled substances.
913.	113. Misbehavior of sentinel.
914.	114. Dueling.
915.	115. Malingering.
916.	116. Riot or breach of peace.
917.	117. Provoking speeches or gestures.
918.	118. Murder.
919.	119. Manslaughter.
920.	120. Rape and carnal knowledge.
921.	121. Larceny and wrongful appropriation.
922.	122. Robbery.
923.	123. Forgery.
923a.	123a. Making, drawing, or uttering check, draft, or order without sufficient funds.
924.	124. Maiming.
925.	125. Sodomy.

Sec.	Art.
926.	126. Arson.
927.	127. Extortion.
928.	128. Assault.
929.	129. Burglary.
930.	130. Housebreaking.
931.	131. Perjury.
932.	132. Frauds against the United States.
933.	133. Conduct unbecoming an officer and a gentleman.
934.	134. General article.

AMENDMENTS

1997—Pub. L. 105-85, div. A, title X, § 1073(a)(10), Nov. 18, 1997, 111 Stat. 1900, struck out "Art." before "95" in item 895.

1996—Pub. L. 104-106, div. A, title XI, § 1112(b), Feb. 10, 1996, 110 Stat. 461, inserted "flight," after "Resistance," in item 895.

1992—Pub. L. 102-484, div. A, title X, § 1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted "operation of a vehicle, aircraft, or vessel" for "driving" in item 911.

1985—Pub. L. 99-145, title V, § 534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98-209, § 8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87-385, § 1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

§ 877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
877	50:671.	May 5, 1950, ch. 169, § 1 (Art. 77), 64 Stat. 134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
878	50:672.	May 5, 1950, ch. 169, § 1 (Art. 78), 64 Stat. 134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of

an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
879	50:673.	May 5, 1950, ch. 169, §1 (Art. 79), 64 Stat. 134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
880(a)	50:674(a).	May 5, 1950, ch. 169, §1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words "even though" are substituted for the word "but" for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 881. Art. 81. Conspiracy

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct,

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
881	50:675.	May 5, 1950, ch. 169, §1 (Art. 81), 64 Stat. 134.

The words "or persons" are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title

(article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
882(a)	50:676(a).	May 5, 1950, ch. 169, §1, (Art. 82), 64 Stat. 134.
882(b)	50:676(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
883	50:677.	May 5, 1950, ch. 169, §1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words "means of" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
884	50:678.	May 5, 1950, ch. 169, §1 (Art. 84), 64 Stat. 135.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
885(a)	50:879(a).	May 5, 1950, ch. 169, §1 (Art. 85), 64 Stat. 135.
885(b)	50:879(b).	
885(c)	50:879(c).	

In subsection (a), the word "unit" is substituted for the words "place of service" to conform to clause (2) of this section and section 886(3) of this title. The word "proper" is omitted as surplusage.

In subsection (b), the word "commissioned" is inserted for clarity. The word "before" is substituted for the words "prior to". The words "its acceptance" are substituted for the words "the acceptance of the same". The words "after tender of" are substituted for the words "having tendered" for clarity. The word "due" is omitted as surplusage.

In subsection (c), the words "attempt to desert" are substituted for the words "attempted desertion".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) falls to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
886	50:680.	May 5, 1950, ch. 169, §1 (Art. 86), 64 Stat. 135.

The words "proper" and "other" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
887	50:681.	May 5, 1950, ch. 169, §1 (Art. 87), 64 Stat. 135.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 96-513, title V, §511(25), Dec. 12, 1980, 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
888	50:682.	May 5, 1950, ch. 169, §1 (Art. 88), 64 Stat. 135.

The word "commissioned" is inserted for clarity. The words "the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession" are substituted for the words "Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States".

AMENDMENTS

1980—Pub. L. 96-513 substituted "Secretary of Transportation" for "Secretary of the Treasury".

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EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
889	50:683.	May 5, 1950, ch. 169, §1 (Art. 89), 64 Stat. 135.

The word "commissioned" is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
890	50:684.	May 5, 1950, ch. 169, §1 (Art. 90), 64 Stat. 135.

The word "commissioned" is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
891	50:685.	May 5, 1950, ch. 169, §1 (Art. 91), 64 Stat. 136.

The word "member" is substituted for the word "person".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
892	50:686.	May 5, 1950, ch. 169, §1 (Art. 92), 64 Stat. 136.

The word "order" is substituted for the word "same".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 937, 2783 of this title.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
893	50:687.	May 5, 1950, ch. 169, §1 (Art. 93), 64 Stat. 136.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable

means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
894(a)	50:688(a).	May 5, 1950, ch. 169, §1
894(b)	50:688(b).	(Art. 94), 64 Stat. 136.

In subsection (a)(1) and (2), the words "or persons" are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word "a" is substituted for the words "an offense of". The words "commissioned officer" are inserted after the word "superior", for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title; title 38 section 6105.

§ 895. Art. 95. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

- (1) resists apprehension;
- (2) flees from apprehension;
- (3) breaks arrest; or
- (4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69; Pub. L. 104-106, div. A, title XI, §1112(a), Feb. 10, 1996, 110 Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
895	50:689.	May 5, 1950, ch. 169, §1
		(Art. 95), 64 Stat. 136.

AMENDMENTS

1996—Pub. L. 104-106 inserted "flight," after "Resistance," in section catchline and amended text generally. Prior to amendment, text read as follows: "Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
896	50:690.	May 5, 1950, ch. 169, §1
		(Art. 96), 64 Stat. 136.

The words "whether or not the prisoner was committed in strict compliance with law" are substituted for the word "duly", to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
897	50:691.	May 5, 1950, ch. 169, §1
		(Art. 97), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 898. Art. 98. Noncompliance with procedural rules

Any person subject to this chapter who—

- (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or
- (2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
898	50:692.	May 5, 1950, ch. 169, §1
		(Art. 98), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

- (1) runs away;
- (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
- (3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
- (4) casts away his arms or ammunition;
- (5) is guilty of cowardly conduct;
- (6) quits his place of duty to plunder or pillage;
- (7) causes false alarms in any command, unit, or place under control of the armed forces;

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(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
899	50:693.	May 5, 1950, ch. 169, §1 (Art. 99), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
900	50:694.	May 5, 1950, ch. 169, §1 (Art. 100), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
901	50:695.	May 5, 1950, ch. 169, §1 (Art. 101), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
902	50:696.	May 5, 1950, ch. 169, §1 (Art. 102), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
903(a)	50:697(a).	May 5, 1950, ch. 169, §1 (Art. 103), 64 Stat. 138.
903(b)	50:697(b).	

In subsection (b)(1), the words "of this section" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 904. Art. 104. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
904	50:698.	May 5, 1950, ch. 169, §1 (Art. 104), 64 Stat. 138.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 6105.

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
905	50:699.	May 5, 1950, ch. 169, § 1 (Art. 105), 64 Stat. 138.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
906	50:700.	May 5, 1950, ch. 169, § 1 (Art. 106), 64 Stat. 138.

The words "of the United States" are omitted as surplusage.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F.R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding

sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 6105.

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

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(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99-145, title V, §534(a), Nov. 8, 1985, 99 Stat. 634.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8312.

§907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
907	50-701.	May 5, 1950, ch. 169, §1 (Art. 107), 64 Stat. 138.

The word "it" is substituted for the words "the same".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
908	50-702.	May 5, 1950, ch. 169, §1 (Art. 108), 64 Stat. 138.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise

willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
909	50-703.	May 5, 1950, ch. 169, §1 (Art. 109), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
910(a)	50-704(a).	May 5, 1950, ch. 169, §1 (Art. 110), 64 Stat. 139.
910(b)	50-704(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel

Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis,

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 99-570, title III, §3055, Oct. 27, 1986, 100 Stat. 3207-76; Pub. L. 102-484, div. A, title X, §1066(a)(1), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 103-160, div. A, title V, §576(a), Nov. 30, 1993, 107 Stat. 1677.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
911	50-705.	May 5, 1950, ch. 169, §1 (Art. 111), 64 Stat. 139.

AMENDMENTS

1993—Par. (2). Pub. L. 103-160 inserted "or more" after "0.10 grams" in two places.

1992—Pub. L. 102-484 substituted "operation of a vehicle, aircraft, or vessel" for "driving" in section catchline and amended text generally. Prior to amendment, text read as follows: "Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct."

1986—Pub. L. 99-570 inserted "or while impaired by a substance described in section 912a(b) of this title (article 112a(b))."

EFFECTIVE DATE OF 1993 AMENDMENT

Section 576(b) of Pub. L. 103-160 provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendment to section 911 of title 10, United States Code, made by section 1066(a)(1) of Public Law 102-484 on October 23, 1992."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
912	50:706.	May 5, 1950, ch. 169, § 1 (Art. 112), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufacturers, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98-209, § 8(a), Dec. 6, 1983, 97 Stat. 1403.)

EFFECTIVE DATE

Section effective first day of eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98-209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100-180, div. A, title XII, § 1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

"(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

"(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

"(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

"(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

"(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

"(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

"(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

"(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

"(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

"(f) REPORT.—Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 911 of this title.

§ 913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

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(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
913	50:707.	May 5, 1950, ch. 169, § 1 (Art. 113), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
914	50:708.	May 5, 1950, ch. 169, § 1 (Art. 114), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

- (1) feigns illness, physical disablement, mental lapse or derangement; or
- (2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
915	50:709.	May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
916	50:710.	May 5, 1950, ch. 169, § 1 (Art. 116), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
917	50:711.	May 5, 1950, ch. 169, § 1 (Art. 117), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

- (1) has a premeditated design to kill;
- (2) intends to kill or inflict great bodily harm;
- (3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or
- (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 102-484, div. A, title X, § 1066(b), Oct. 23, 1992, 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
918	50:712.	May 5, 1950, ch. 169, § 1 (Art. 118), 64 Stat. 140.

The words "of this section" are omitted as surplusage.

AMENDMENTS

1992—Par. (3). Pub. L. 102-484 substituted "another" for "others".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 919, 929, 937 of this title.

§ 919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

- (1) by culpable negligence; or
- (2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
919(a)	50:713(a).	May 5, 1950, ch. 189, §1
919(b)	50:713(b).	(Art. 119), 64 Stat. 140.

The word "named" is substituted for the word "specified".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 920. Art. 120. Rape and carnal knowledge

(a) Any person subject to this chapter who commits an act of sexual intercourse, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

- (1) who is not that person's spouse; and
- (2) who has not attained the age of sixteen years;

is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(d)(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that that person had at the time of the alleged offense attained the age of sixteen years.

(2) The accused has the burden of proving a defense under paragraph (1) by a preponderance of the evidence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 102-484, div. A, title X, § 1066(c), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 104-106, div. A, title XI, § 1113, Feb. 10, 1996, 110 Stat. 462.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
920(a)	50:714(a).	May 5, 1950, ch. 189, §1
920(b)	50:714(b).	(Art. 120), 64 Stat. 140.
920(c)	50:714(c).	

In subsection (c), the words "either of" are inserted for clarity.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106, § 1113(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct."

Subsec. (d). Pub. L. 104-106, § 1113(b), added subsec. (d).

1992—Subsec. (a). Pub. L. 102-484 struck out "with a female not his wife" after "intercourse" and "her" after "without".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102-484, set out as a note under section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
921(a)	50:715(a).	May 5, 1950, ch. 189, §1
921(b)	50:715(b).	(Art. 121), 64 Stat. 140.

In subsection (a), the words "whatever" and "true" are omitted as surplusage. The word "it" is substituted for the words "the same" in clauses (1) and (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
922	50:716.	May 5, 1950, ch. 189, §1
		(Art. 122), 64 Stat. 140.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

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§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
923	50:717.	May 5, 1950, ch. 169, §1 (Art. 123), 64 Stat. 141.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87-385, §1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Section 2 of Pub. L. 87-385 provided that: "This Act [enacting this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October 1961]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
924	50:718.	May 5, 1950, ch. 169, §1 (Art. 124), 64 Stat. 141.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 925. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
925(a)	50:719(a).	May 5, 1950, ch. 169, §1 (Art. 125), 64 Stat. 141.
925(b)	50:719(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
926(a)	50:720(a).	May 5, 1950, ch. 169, §1 (Art. 126), 64 Stat. 141.
926(b)	50:720(b).	

In subsection (b), the words "of this section" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
927	50:721.	May 5, 1950, ch. 169, §1 (Art. 127), 64 Stat. 141.

The words "of any description" are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
928(a)	50:722(a).	May 5, 1950, ch. 169, §1 (Art. 128), 64 Stat. 141.
928(b)	50:722(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918-928 of this title (articles 118-128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
929	50:723.	May 5, 1950, ch. 169, §1 (Art. 129), 64 Stat. 142.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
930	50:724.	May 5, 1950, ch. 169, §1 (Art. 130), 64 Stat. 142.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 94-550, §3, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 97-295, §1(13), Oct. 12, 1982, 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
931	50:725.	May 5, 1950, ch. 169, §1 (Art. 131), 64 Stat. 142.

The words "in a" are inserted before the words "course of justice".

AMENDMENTS

1982—Par. (2). Pub. L. 97-295 struck out "United States Code," after "title 28,".

1976—Pub. L. 94-550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim

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(A) makes or uses any writing or other
paper knowing it to contain any false or
fraudulent statements;

(B) makes any oath to any fact or to any
writing or other paper knowing the oath to
be false; or

(C) forges or counterfeits any signature
upon any writing or other paper, or uses any
such signature knowing it to be forged or
counterfeited;

(3) who, having charge, possession, custody
or control of any money, or other property of
the United States, furnished or intended for
the armed forces thereof, knowingly delivers
to any person having authority to receive it,
any amount thereof less than that for which
he receives a certificate or receipt; or

(4) who, being authorized to make or deliver
any paper certifying the receipt of any prop-
erty of the United States furnished or in-
tended for the armed forces thereof, makes or
delivers to any person such writing without
having full knowledge of the truth of the
statements therein contained and with intent
to defraud the United States;

shall, upon conviction, be punished as a court-
martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
932	50:726.	May 5, 1950, ch. 169, §1 (Art. 132), 64 Stat. 142.

The word "it" is substituted for the words "the
same" throughout the revised section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or mid-
shipman who is convicted of conduct unbecom-
ing an officer and a gentleman shall be punished
as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
933	50:727.	May 5, 1950, ch. 169, §1 (Art. 133), 64 Stat. 142.

The word "commissioned" is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 934. Art. 134. General article

Though not specifically mentioned in this
chapter, all disorders and neglects to the preju-
dice of good order and discipline in the armed
forces, all conduct of a nature to bring discredit
upon the armed forces, and crimes and offenses
not capital, of which persons subject to this
chapter may be guilty, shall be taken cog-

nizance of by a general, special, or summary
court-martial, according to the nature and de-
gree of the offense, and shall be punished at the
discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
934	50:728.	May 5, 1950, ch. 169, §1 (Art. 134), 64 Stat. 142.

The words "shall be" are inserted before the word
"punished".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths and to act as notary.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter
may be convened by any person authorized to
convene a general court-martial or by any other
person designated by the Secretary concerned
for that purpose, whether or not the persons in-
volved have requested such an inquiry.

(b) A court of inquiry consists of three or more
commissioned officers. For each court of inquiry
the convening authority shall also appoint coun-
sel for the court.

(c) Any person subject to this chapter whose
conduct is subject to inquiry shall be designated
as a party. Any person subject to this chapter or
employed by the Department of Defense who has
a direct interest in the subject of inquiry has
the right to be designated as a party upon re-
quest to the court. Any person designated as a
party shall be given due notice and has the right
to be present, to be represented by counsel, to
cross-examine witnesses, and to introduce evi-
dence.

(d) Members of a court of inquiry may be chal-
lenged by a party, but only for cause stated to
the court.

(e) The members, counsel, the reporter, and in-
terpreters of courts of inquiry shall take an oath
to faithfully perform their duties.

(f) Witnesses may be summoned to appear and
testify and be examined before courts of inquiry,
as provided for courts-martial.

(g) Courts of inquiry shall make findings of
fact but may not express opinions or make rec-
ommendations unless required to do so by the
convening authority.

(h) Each court of inquiry shall keep a record of
its proceedings, which shall be authenticated by
the signatures of the president and counsel for
the court and forwarded to the convening au-
thority. If the record cannot be authenticated
by the president, it shall be signed by a member
in lieu of the president. If the record cannot be

authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
935(a)	50:731(a).	May 5, 1950, ch. 169, § 1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of a Department".

In subsection (b), the word "commissioned" is inserted for clarity. The word "consists" is substituted for the words "shall consist".

In subsection (c), the word "has" is substituted for the words "shall have".

In subsection (e), the words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1.

In subsection (g), the word "may" is substituted for the word "shall".

In subsection (h), the word "If" is substituted for the words "In case".

§ 936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.
- (5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; Pub. L. 86-589, July 5, 1960, 74 Stat. 329; Pub. L. 90-179, § 1(7), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90-632, § 2(34), Oct. 24, 1968, 82 Stat. 1343; Pub. L. 98-209, § 2(f), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99-661, div. A, title VIII, § 804(c), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 100-456, div. A, title XII, § 1234(a)(1),

Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101-510, div. A, title V, § 551(b), Nov. 5, 1990, 104 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
936(a)	50:732(a).	May 5, 1950, ch. 169, § 1 (Art. 136), 64 Stat. 143.
936(b)	50:732(b).	
936(c)	50:732(c).	
936(d)	50:732(d).	

In subsection (a), the word "may" is substituted for the words "shall have authority to". The word "shall" before the words "have the general powers" is omitted as surplusage. The words "the continental limits" are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words "in the armed forces" are omitted as surplusage.

In subsection (b), the word "may" is substituted for the words "shall have authority to".

In subsection (c), the words "of any character" are omitted as surplusage. The word "may" is substituted for the word "shall".

In subsection (d), the word "is" is substituted for the words "shall be".

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-510, § 551(b)(1), struck out ", and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States" after "including military justice" in introductory provisions.

Subsecs. (c), (d). Pub. L. 101-510, § 551(b)(2), struck out subsecs. (c) and (d) which read as follows:

"(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

"(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority."

1988—Subsec. (a). Pub. L. 100-456 struck out "the Canal Zone," before "Puerto Rico,".

1986—Subsecs. (a), (b). Pub. L. 99-661 inserted "or performing inactive-duty training" after "active duty".

1983—Subsec. (a)(1). Pub. L. 98-209, § 2(f)(1), struck out "of the Army, Navy, Air Force, and Marine Corps" after "All judge advocates".

Subsec. (a)(2) to (7). Pub. L. 98-209, § 2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968—Subsec. (b). Pub. L. 90-632 substituted "military judge" for "law officer" in par. (1).

1967—Subsec. (a)(1). Pub. L. 90-179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86-589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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 Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see

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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.

§ 937. Art. 137. Articles to be explained

(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this title (articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Pub. L. 99-661, div. A, title VIII, § 804(d), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 104-106, div. A, title XI, § 1152, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
937	50:733.	May 5, 1950, ch. 169, § 1 (Art. 137), 64 Stat. 144.

The word "each" is substituted for the word "every". The word "member" is substituted for the word "person". The words "in [any of] the armed forces of the United States" are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsecs. (a)(1) and (b), is classified to this chapter.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-106 substituted "within fourteen days" for "within six days".

1986—Pub. L. 99-661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
938	50:734.	May 5, 1950, ch. 169, § 1 (Art. 138), 64 Stat. 144.

The words "commanding officer" are substituted for the word "commander". The word "who" is inserted after the word "and". The word "commissioned" is inserted after the word "superior" for clarity. The words "The officer exercising general court-martial jurisdiction" are substituted for the words "That officer" for clarity. The word "send" is substituted for the word "transmit". The word "Secretary" is substituted for the word "Department" for accuracy, since the "Department", as an entity, could not act upon the complaint.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
939(a)	50:735(a).	May 5, 1950, ch. 169, § 1
939(b)	50:735(b).	(Art. 139), 64 Stat. 144.

In subsection (a), the words "Secretary concerned" are substituted for the words "Secretary of the Department". The word "under" is substituted for the words "subject to". The words "or affirmation" are omitted as covered by the definition of the word "oath" in section 1 of title 1. The words "it has" are substituted for the words "shall have" in the second sentence. The word "is" is substituted for the words "shall be" before the words "subject" and "conclusive". The word "commissioned" is inserted for clarity.

In subsection (b), the word "If" is substituted for the word "Where". The word "considered" is substituted for the word "deemed".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
940	50:736.	May 5, 1950, ch. 169, § 1
		(Art. 140), 64 Stat. 145.

The word "may" is substituted for the words "is authorized to * * * to".

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec.	Art.
941.	141. Status.
942.	142. Judges.
943.	143. Organization and employees.
944.	144. Procedure.
945.	145. Annuities for judges and survivors.
946.	146. Code committee.

AMENDMENTS

1994—Pub. L. 103-337, div. A, title IX, § 924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted "UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES" for "COURT OF MILITARY APPEALS" as subchapter heading.

1990—Pub. L. 101-510, div. A, title XIV, § 1484(1)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

§ 941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101-189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103-337, div. A, title IX, § 924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

CHANGE OF NAME

Section 924(a)(1) of Pub. L. 103-337 provided that: "The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces."

§ 942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after March 31 and before October 1 of any year, the term shall expire on September 30 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after September 30 of any year and before April 1 of the following year, the term shall expire fifteen years after such September 30.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

- (1) neglect of duty;
- (2) misconduct; or
- (3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

- (i) during a period a judge of the court is unable to perform his duties because of illness or other disability;
- (ii) during a period in which a position of judge of the court is vacant; or
- (iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed,

the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101-510, div. A, title V, §541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102-190, div. A, title X, §1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (e)(5). Pub. L. 106-65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

1996—Subsec. (e)(5). Pub. L. 104-106 substituted "Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives" for "Committees on Armed Services of the Senate and the House of Representatives".

1994—Subsecs. (a), (f)(1). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1991—Subsec. (e)(1). Pub. L. 102-190, §1061(b)(1)(A)(i)-(iv), designated existing provisions as subpar. (A), struck out "(2)(A)" before "The chief judge", moved sentence beginning "The chief judge of the court" to end of par. (1)(A), substituted "an individual who is a senior judge of the court under this subparagraph" for "a senior judge of the court", and added subpar. (B).

Subsec. (e)(2). Pub. L. 102-190, §1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102-190, §1061(b)(1)(B), substituted "paragraph (1)" for "paragraph (2)" wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102-190, § 1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102-190, § 1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101-510, § 541(f)(1), substituted "civilian life" for "civil life".

Subsec. (b)(4). Pub. L. 101-510, § 541(f)(2), added par. (4).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1061(b)(1)(D) of Pub. L. 102-190 provided that: "The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989."

EFFECTIVE DATE FOR REPEAL OF TERMINATION OF AUTHORITY FOR CHIEF JUSTICE OF UNITED STATES TO DESIGNATE ARTICLE III JUDGES FOR TEMPORARY SERVICE ON COURT OF APPEALS FOR THE ARMED FORCES

Pub. L. 104-201, div. A, title X, § 1074(c)(2), Sept. 23, 1996, 110 Stat. 2660, provided that: "The authority provided under section 942(f) of title 10, United States Code, shall be effective as if section 1142 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106; 110 Stat. 467) [repealing section 1301(i) of Pub. L. 101-189, set out below] had been enacted on September 29, 1995."

TRANSITIONAL PROVISIONS

Section 1301(d)-(i) of Pub. L. 101-189, as amended by Pub. L. 104-106, div. A, title XI, § 1142, Feb. 10, 1996, 110 Stat. 467; Pub. L. 104-201, div. A, title X, § 1068(c), Sept. 23, 1996, 110 Stat. 2655, provided that:

"(d) TRANSITION FROM THREE-JUDGE COURT TO FIVE-JUDGE COURT.—(1) Effective during the period before October 1, 1990—

"(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

"(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

"(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judge who is first appointed to one of the two new positions of the court created as of October 1, 1990, as designated by the President at the time of appointment, the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven.

"(e) TRANSITION RULES RELATING TO RETIREMENT OF NEW JUDGES.—(1) Except as otherwise provided in paragraphs (2) and (3), a judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

"(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

"(A) completes the term of service for which he is first appointed;

"(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] at any time after the completion of such term of service;

"(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

"(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

"(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing

the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be $\frac{1}{2}$ of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge's service as a judge of the court.

"(f) APPLICABILITY OF AMENDED RETIREMENT PROVISIONS.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

"(g) TERMS OF CURRENT JUDGES.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

"(h) CIVIL SERVICE STATUS OF CURRENT EMPLOYEES.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 945 of this title; title 5 section 8337.

§ 943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2)

is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid to the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102-190, div. A, title X, §1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102-484, div. A, title X, §§1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec.

(i), is section 301(a)(2) and (d) of Pub. L. 99-335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1992—Subsec. (a)(1). Pub. L. 102-484, §1052(11), substituted "section 942(e)(1)(B) of this title (article 142(e)(1)(B))" for "section 943(e)(1)(B) of this title (art. 143(e)(1)(B))".

Subsec. (i). Pub. L. 102-484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102-190 inserted at end "A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service."

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1062(a)(2) of Pub. L. 102-484 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992]."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102-190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101-189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Section 1062(b) of Pub. L. 102-484 provided that:

"(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note] if—

"(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

"(B) as of the date of the election, such individual is—

"(i) subject to the Civil Service Retirement System; or

"(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

"(2) An election under this subsection—

"(A) shall not be effective unless it is—

"(i) made within 30 days after the date of the enactment of this Act; and

"(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note]; and

"(B) may not be revoked.

"(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 942 of this title.

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Any recommendation of the committee relating to—

(i) uniformity of policies as to sentences;

(ii) amendments to this chapter; and

(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1999—Subsec. (c)(1)(A). Pub. L. 106-65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

1996—Subsec. (c)(1)(A). Pub. L. 104-106 substituted "Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives" for "Committees on Armed Services of the Senate and House of Representatives".

1994—Subsec. (b)(1). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

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