

Public Law 98-209
98th Congress

An Act

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to improve the quality and efficiency of the military justice system, to revise the laws concerning review of courts-martial, and for other purposes.

Dec. 6, 1983

[S. 974]

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

Military Justice
Act of 1983.

SHORT TITLE; REFERENCES TO THE UNIFORM CODE OF MILITARY JUSTICE

SECTION 1. (a) This Act may be cited as the "Military Justice Act of 1983".

10 USC 801 note.

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

10 USC 801 *et seq.*

INCLUSION OF LAW SPECIALISTS OF THE COAST GUARD WITHIN
DEFINITION OF JUDGE ADVOCATE

SEC. 2. (a) Clause 13 of section 801 (article 1(13)) is amended to read as follows:

10 USC 801.

"(13) 'Judge advocate' means—

"(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

"(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

"(C) an officer of the Coast Guard who is designated as a law specialist."

(b) The first sentence of section 806(a) (article 6(a)) is amended by striking out "and Air Force and law specialists of the" and inserting in lieu thereof "Air Force, and".

10 USC 806.

(c) Section 815(e) (article 15(e)) is amended by striking out "of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or" and inserting in lieu thereof "or a lawyer of the".

10 USC 815.

(d) Section 827 (article 27) is amended—

10 USC 827.

(1) in subsection (b)(1), by striking out "of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,"; and

(2) in subsection (c)(3), by striking out "or a law specialist,".

(e) Section 842(a) (article 42(a)) is amended by striking out "law specialist," both places it appears in the third sentence.

10 USC 842.

(f) Section 936(a) (article 136(a)) is amended—

10 USC 936.

(1) in clause (1), by striking out "of the Army, Navy, Air Force, and Marine Corps"; and

(2) by striking out clause (2) and redesignating clauses (3) through (7) as clauses (2) through (6), respectively.

MATTERS RELATING TO THE MILITARY JUDGE, COUNSEL, AND MEMBERS
OF THE COURT-MARTIAL

- 10 USC 816. SEC. 3. (a) Section 816(1)(B) (article 16(1)(B)) is amended by inserting "orally on the record or" before "in writing".
- 10 USC 825. (b) Section 825 (article 25) is amended by adding at the end thereof the following new subsection:
- "(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant."
- 10 USC 826. (c)(1) Section 826 (article 26) is amended—
- (A) by striking out subsection (a) and inserting in lieu thereof the following:
- "(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed."; and
- (B) in the first sentence of subsection (c), by striking out "by the convening authority, and, unless" and inserting in lieu thereof "in accordance with regulations prescribed under subsection (a). Unless".
- 10 USC 827. (2) Section 827(a) (article 27(a)) is amended—
- (A) by striking out "For each" and all that follows through "appropriate." and inserting in lieu thereof the following: "(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial."; and
- (B) by designating the sentence beginning "No person who has acted as investigating officer" as paragraph (2) and by striking out "assistant defense counsel" in such sentence and inserting in lieu thereof "assistant or associate defense counsel".
- 10 USC 829. (d) Section 829(a) (article 29(a)) is amended by striking out "except for" and all that follows through the period and inserting in lieu thereof the following: "unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause."
- 10 USC 838. (e)(1) Section 838(b)(6) (article 38(b)(6)) is amended by striking out "a convening authority" and inserting in lieu thereof "the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel".
- (2) Paragraph (7) of section 838(b) (article 38(b)(7)) is amended by inserting after the first sentence the following new sentence: "Such

regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.”

(3) Section 838(c) (article 38(c)) is amended to read as follows: 10 USC 838.

“(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

“(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

“(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

“(3) may take other action authorized by this chapter.”. *Infra.*

(f) Section 842(a) (article 42(a)) is amended by striking out “assistant defense counsel” in the first and third sentences and inserting in lieu thereof “assistant or associate defense counsel”. 10 USC 842.

PRETRIAL ADVICE AND REFERRAL OF CHARGES

SEC. 4. (a)(1) The first sentence of section 834(a) is amended by striking out “or legal officer”. 10 USC 834.

(2) The second sentence of such section is amended to read as follows: “The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

“(1) the specification alleges an offense under this chapter;

“(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

“(3) a court-martial would have jurisdiction over the accused and the offense.”.

(b) Section 834 (article 34) is further amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection (b):

“(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

“(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

“(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.”.

RIGHT TO APPEAL AND RELATED MATTERS

SEC. 5. (a)(1) Section 860 (article 60) is amended to read as follows: 10 USC 860.

“§ 860. Art. 60. Action by the convening authority

“(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

“(b)(1) Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening

authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within 7 days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

“(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

“(B) in the case of all other courts-martial, for not more than an additional 10 days.

“(2) In a summary court-martial case the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

“(3) In no event shall the accused in any general or special court-martial case have less than a 7-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.

“(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

“(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

“(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) and, if applicable, under subsection (d), or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

“(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

“(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

“(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

“(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommen-

Extension
period.

Extension
period.

Waiver.

Written
recommenda-
tion.

dation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days. Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

Extension
period.

“(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

“(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

“(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

“(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

“(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

“(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.”

Rehearing.

(2) The item relating to such section (article) in the table of sections at the beginning of subchapter IX is amended to read as follows:

“860. 60. Action by the convening authority.”

(b)(1) Section 861 (article 61) is amended to read as follows:

10 USC 861.

“§ 861. Art. 61. Waiver or withdrawal of appeal

“(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking

Post, p. 1402.
Ante, p. 1395.

Extension
period.

such action, for good cause, may extend the period for such filing by not more than 30 days.

Ante, p. 1395.

“(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

Post, p. 1402.

“(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).”

(2) The item relating to such section (article) in the table of sections at the beginning of subchapter IX is amended to read as follows:

10 USC 862.

“861. 61. Waiver or withdrawal of appeal.”

(c)(1) Section 862 (article 62) is amended to read as follows:

“§ 862. Art. 62. Appeal by the United States

Written notice.

“(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.

“(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

Submittal to
Court of Military
Review.

“(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

“(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Military Review and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Military Review may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

“(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.”

(2) The item relating to such section (article) in the table of sections at the beginning of subchapter IX is amended to read as follows:

10 USC 863.

“862. 62. Appeal by the United States.”

(d) Section 863 (article 63) is amended—

(1) by striking out subsection (a); and

(2) in subsection (b)—

(A) by striking out “(b)”;

(B) by inserting “under this chapter” after “Each rehearing”; and

(C) by inserting at the end thereof the following: "If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial."

(e) Section 871 (article 71) is amended—

10 USC 871.

(1) by striking out subsection (a) and inserting in lieu thereof the following:

Death sentence.

"(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended."

(2) in subsection (b), by striking out the first and second sentences and inserting in lieu thereof the following: "If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit."; and

Dismissal.

(3) by striking out subsections (c) and (d) and inserting in lieu thereof the following:

Sentences.

Final judgment.

"(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review and—

Ante, p. 1397.

"(A) the time for the accused to file a petition for review by the Court of Military Appeals has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

"(B) such a petition is rejected by the Court of Military Appeals; or

Review.

"(C) review is completed in accordance with the judgment of the Court of Military Appeals and—

"(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

"(ii) such a petition is rejected by the Supreme Court; or

"(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

"(2) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title

(article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

Post, p. 1401.

Ante, p. 1395.

Suspension.

"(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part thereof, except a death sentence."

10 USC 857.

(f) Subsection (a) of section 857 (article 57(a)) is amended to read as follows:

"(a) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c))."

10 USC 876a.

(g) Section 876a (article 76a) is amended—

(1) by striking out "864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction" and inserting in lieu thereof "860 of this title (article 60)"; and
(2) by striking out "by the officer exercising general court-martial jurisdiction" in the second sentence and inserting in lieu thereof "under section 860 of this title (article 60)".

(h)(1) The table of subchapters at the beginning of chapter 47 is amended by striking out the item relating to subchapter IX and inserting in lieu thereof the following:

"IX. Post-trial Procedure and Review of Courts-Martial..... 859 59".

(2) The subchapter heading at the beginning of subchapter IX is amended to read as follows:

"SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL".

RECORD OF TRIAL

10 USC 801.

SEC. 6. (a) Section 801 (article 1) is amended by adding at the end thereof the following new clause:

"Record."

"(14) 'Record', when used in connection with the proceedings of a court-martial, means—

"(A) an official written transcript, written summary, or other writing relating to the proceedings; or

"(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced."

10 USC 849.

(b) Subsections (d) and (f) of section 849 (article 49) are each amended by inserting after "read in evidence" the following: "or, in the case of audiotape, videotape, or similar material, may be played in evidence".

10 USC 854.

(c) Section 854 (article 54) is amended—

(1) in subsection (a), by striking out the last sentence;

(2) in subsection (b), by striking out "shall contain the matter and";

(3) by redesignating subsection (c) as subsection (d); and

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

"(c)(1) A complete record of the proceedings and testimony shall be prepared—

“(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

“(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge.

“(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.”.

(d)(1) Section 865 (article 65) is amended to read as follows: 10 USC 865.

“§ 865. Art. 65. Disposition of records

“(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

Post, p. 1402.

Ante, p. 1397.

“(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.”.

(2) The item relating to such section (article) in the table of sections at the beginning of subchapter IX is amended to read as follows:

“865. 65. Disposition of records.”.

REVIEW OF COURTS-MARTIAL AND RELATED MATTERS

SEC. 7. (a)(1) Section 864 (article 64) is amended to read as follows: 10 USC 864.

“§ 864. Art. 64. Review by a judge advocate

“(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate’s review shall be in writing and shall contain the following:

Post, p. 1402.

“(1) Conclusions as to whether—

“(A) the court had jurisdiction over the accused and the offense;

“(B) the charge and specification stated an offense; and

“(C) the sentence was within the limits prescribed as a matter of law.

“(2) A response to each allegation of error made in writing by the accused.

“(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

“(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the

time the court was convened (or to that person's successor in command) if—

“(1) the judge advocate who reviewed the case recommends corrective action;

Ante, p. 1395.

“(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

“(3) such action is otherwise required by regulations of the Secretary concerned.

“(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

“(A) disapprove or approve the findings or sentence, in whole or in part;

“(B) remit, commute, or suspend the sentence in whole or in part;

“(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

“(D) dismiss the charges.

“(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

“(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).”

Infra.

(2) The item relating to such section (article) in the table of sections at the beginning of subchapter IX is amended to read as follows:

“864. 64. Review by a judge advocate.”

10 USC 866.

(b) Section 866(a) (article 66(a)) is amended by inserting after the second sentence the following new sentence: “Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules.”

(c) Section 866(b) (article 66(b)) is amended to read as follows:

“(b) The Judge Advocate General shall refer to a Court of Military Review the record in each case of trial by court-martial—

“(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

“(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).”

Ante, p. 1397.

10 USC 867.

(d) Section 867(b)(1) (article 67(b)(1)) is amended by striking out “affects a general or flag officer or”.

10 USC 869.

(e)(1) The text of section 869 (article 69) is amended to read as follows:

“(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in

law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both. If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).

“(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

Ante, p. 1395.

“(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.”

Rehearing.

(2) The two-year period specified under the second sentence of section 869(b) (article 69(b)) of title 10, United States Code, as amended by paragraph (1), does not apply to any application filed in the office of the appropriate Judge Advocate General (as defined in section 801(1) of such title) on or before October 1, 1983. The application in such a case shall be considered in the same manner and with the same effect as if such two-year period had not been enacted.

10 USC 869 note.

INCLUSION OF CONTROLLED SUBSTANCES IN PUNITIVE ARTICLES

SEC. 8. (a) Subchapter X is amended by inserting after section 912 (article 112) the following new section (article):

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

10 USC 912a.

“(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, 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).”.

(b) The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 912 (article 112) the following new item:

“912a. 112a. Wrongful use, possession, etc., of controlled substances.”.

THE CODE COMMITTEE

10 USC 867.

SEC. 9. (a) Section 867(g) (article 67(g)) is amended—

(1) by striking out “The Court of Military Appeals” and all that follows through “and report” and inserting in lieu thereof “(1) A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report”;

(2) by adding at the end thereof the following:

“(2) Each member of the committee appointed by the Secretary of Defense shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

5 USC app.

“(3) The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.”.

Commission,
establishment.
Study and
recommendations.

(b)(1) The Secretary of Defense shall establish a commission to study and make recommendations concerning the following matters:

(A) Whether the sentencing authority in court-martial cases should be exercised by a military judge in all noncapital cases to which a military judge has been detailed.

(B) Whether military judges and the Courts of Military Review should have the power to suspend sentences.

(C) Whether the jurisdiction of the special court-martial should be expanded to permit adjudgment of sentences including confinement of up to one year, and what, if any, changes should be made to current appellate jurisdiction.

(D) Whether military judges, including those presiding at special and general courts-martial and those sitting on the Courts of Military Review, should have tenure.

(E) What should be the elements of a fair and equitable retirement system for the judges of the United States Court of Military Appeals.

Membership.

(2) The commission shall consist of nine members, at least three of whom shall be persons from private life who are recognized authorities in military justice or criminal law.

Report.

(3) The commission shall prepare a comprehensive report in support of its recommendations on the matters set forth in paragraph (1). The commission shall include in such report its findings and comments on the following matters:

(A) The experience in the civilian sector with jury sentencing and judge-alone sentencing, with particular reference to consist-

ency, uniformity, sentence appropriateness, efficiency in the sentencing process, and impact on the rights of the accused.

(B) The potential impact of mandatory judge-alone sentencing on the Armed Forces, with particular reference to consistency, uniformity, sentence appropriateness, efficiency in the sentencing process, impact on the rights of the accused, effect on the participation of members of the Armed Forces in the military justice system, impact on relationships between judge advocates and other members of the Armed Forces, and impact on the perception of the military justice system by members of the Armed Forces, the legal profession, and the general public.

(C) The likelihood of a reduction in the number of general court-martial cases in the event the confinement jurisdiction of the special court-martial is expanded; the additional protections that should be afforded the accused if such jurisdiction is expanded; whether the minimum number of members prescribed by law for a special court-martial should be increased; and whether the appellate review process should be modified so that a greater number of cases receive review by the military appellate courts, in lieu of legal reviews presently conducted in the offices of the Judge Advocates General and elsewhere, especially if the commission determines that the special court-martial jurisdiction should be expanded.

(D) The effectiveness of the present systems for maintaining the independence of military judges and what, if any, changes are needed in these systems to ensure maintenance of an independent military judiciary, including a term of tenure for such judges consistent with efficient management of military judicial resources.

(4) The commission shall transmit its report to the Committees on Armed Services of the Senate and the House of Representatives and to the committee established under section 867(g) (article 67(g)) of title 10, United States Code, not later than the first day of the ninth calendar month that begins after the date of the enactment of this Act. Not later than the first day of the third calendar month that begins after receipt of such report, the committee established under section 867(g) (article 67(g)) of such title shall submit such comments on the report as it considers appropriate to the Committees on Armed Services of the Senate and the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

(5) The Secretary of Defense shall ensure that the commission is provided with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(6) The Secretary shall ensure that the commission has reasonable access to information relevant to the study.

Report to congressional committees.

Ante, p. 1404.

Report comments, submittal to congressional committees and departmental Secretaries.

SUPREME COURT REVIEW

SEC. 10. (a)(1) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

28 USC 1259.

“§ 1259. Court of Military Appeals; certiorari

“Decisions of the United States Court of Military Appeals may be reviewed by the Supreme Court by writ of certiorari in the following cases:

10 USC 867.

“(1) Cases reviewed by the Court of Military Appeals under section 867(b)(1) of title 10.

“(2) Cases certified to the Court of Military Appeals by the Judge Advocate General under section 867(b)(2) of title 10.

“(3) Cases in which the Court of Military Appeals granted a petition for review under section 867(b)(3) of title 10.

“(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Military Appeals granted relief.”

(2) The table of sections at the beginning of chapter 81 of such title is amended by adding at the end thereof the following new item:

“1259. Court of Military Appeals; certiorari.”

(b) Section 2101 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

“(g) The time for application for a writ of certiorari to review a decision of the United States Court of Military Appeals shall be as prescribed by rules of the Supreme Court.”

10 USC 866.

(c)(1) Section 866(e) (article 66(e)) is amended by striking out “or the Court of Military Appeals” and inserting in lieu thereof “the Court of Military Appeals, or the Supreme Court”.

10 USC 867.

(2) Section 867 (article 67) is amended by adding at the end thereof the following new subsection:

“(h)(1) Decisions of the Court of Military Appeals are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under such section any action of the Court of Military Appeals in refusing to grant a petition for review.

Supra.

“(2) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.”

10 USC 870.

(3)(A) Section 870(b) (article 70(b)) is amended by adding at the end thereof the following new sentence: “Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.”

(B) Subsections (c) and (d) of such section are amended to read as follows:

“(c) Appellate defense counsel shall represent the accused before the Court of Military Review, the Court of Military Appeals, or the Supreme Court—

“(1) when requested by the accused;

“(2) when the United States is represented by counsel; or

“(3) when the Judge Advocate General has sent the case to the Court of Military Appeals.

“(d) The accused has the right to be represented before the Court of Military Review, the Court of Military Appeals, or the Supreme Court by civilian counsel if provided by him.”

CORRECTION OF RECORDS; DISCHARGE REVIEW

SEC. 11. (a) Section 1552 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

“(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

10 USC 801 *et seq.*

“(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

“(2) action on the sentence of a court-martial for purposes of clemency.”.

(b) Section 1553 of such title is amended by adding at the end of subsection (a) the following new sentence: “With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.”.

10 USC 1553.

EFFECTIVE DATE; CONFORMING AMENDMENT

SEC. 12. (a)(1) The amendments made by this Act shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act, except that the amendments made by sections 9, 11 and 13 shall be effective on the date of the enactment of this Act. The amendments made by section 11 shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

10 USC 801 note.

(2) The amendments made by section 3(c) and 3(e) do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

(3) The amendments made by section 4 shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

(4) The amendments made by sections 5, 6, and 7 shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

(5) The amendments made by section 8 shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.

(b) Section 7(b)(1) of the Military Justice Amendments of 1981 (95 Stat. 1089; 10 U.S.C. 706 note) is amended to read as follows:

“(b)(1) The amendments made by section 2 shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

- Ante*, p. 1401. “(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer 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; or
- Ante*, p. 1393. “(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.”
- Ante*, p. 1395.

TECHNICAL AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE

- 10 USC 802. SEC. 13. (a)(1) Clauses (11) and (12) of subsection (a) of section 802 (article 802) are amended—
- (A) by striking out “the following”; and
- (B) by inserting “the Commonwealth of” before “Puerto Rico”.
- (2) Subsection (b) of such section (article) is amended by striking out “of this section”.
- 10 USC 815. (b)(1) The heading of section 815 (article 15) is amended to read as follows:
- “§ 815. Art. 15. Commanding officer’s non-judicial punishment”.
- (2) Subsection (b) of such section (article) is amended—
- (A) by striking out “of this section”; and
- (B) by striking out “subsection (b)(2)(A)” in clause (2)(H)(i) and inserting in lieu thereof “clause (A)”.
- 10 USC 825. (c) Section 825(c)(2) (article 25(c)(2)) is amended by striking out “the word”.
- 10 USC 867. (d) Section 867(a)(3) (article 67(a)(3)) is amended by inserting “Circuit” after “District of Columbia”:

Approved December 6, 1983.

LEGISLATIVE HISTORY—S. 974:

HOUSE REPORT No. 98-549 (Comm. on Armed Services).
 SENATE REPORT No. 98-53 (Comm. on Armed Services).
 CONGRESSIONAL RECORD, Vol. 129 (1983):
 Apr. 28, considered and passed Senate.
 Nov. 16, considered and passed House, amended.
 Nov. 18, Senate concurred in House amendment.