

pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, §2(5), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 106-65, div. A, title V, §577(a), Oct. 5, 1999, 113 Stat. 625; Pub. L. 107-107, div. A, title X, §1048(g)(4), Dec. 28, 2001, 115 Stat. 1228.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
819	50:579.	May 5, 1950, ch. 169, §1 (Art. 19), 64 Stat. 114.

The word “shall” in the first sentence is omitted as surplusage. The words “for more than” are substituted for the words “in excess of”. The words “more than” are substituted for the words “a period exceeding”. The word “may” is substituted for the word “shall” in the last sentence.

AMENDMENTS

2001—Pub. L. 107-107, §1048(g)(4), amended directory language of Pub. L. 106-65, §577(a)(2). See 1999 Amendment note below.

1999—Pub. L. 106-65, §577(a)(2), as amended by Pub. L. 107-107, §1048(g)(4), inserted “, confinement for more than six months, or forfeiture of pay for more than six months” after “A bad-conduct discharge” in third sentence.

Pub. L. 106-65, §577(a)(1), substituted “one year” for “six months” in two places in second sentence.

1968—Pub. L. 90-632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title X, §1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(4) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106-65 as enacted.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title V, §577(b), Oct. 5, 1999, 113 Stat. 625, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act [Oct. 5, 1999] and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial.”

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.

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month’s pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90-632, §2(6), Oct. 24, 1968, 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
820	50:580.	May 5, 1950, ch. 169, §1 (Art. 20), 64 Stat. 114.

The word “shall” in the first sentence is omitted as surplusage. The word “may” is substituted for the word “shall” in the second sentence. The words “the provisions of” are omitted as surplusage. The word “IF” is substituted for the word “Where”. The words “for more than” are substituted for the words “in excess of”. The words “more than” are substituted for the words “pay in excess of”.

AMENDMENTS

1968—Pub. L. 90-632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person’s objection if he has previously been offered and has refused article 15 punishment.

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.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
821	50:581.	May 5, 1950, ch. 169, §1 (Art. 21), 64 Stat. 115.

The words “do not deprive” are substituted for the words “shall not be construed as depriving”. The words “with respect to” are substituted for the words “in respect of”.

AMENDMENTS

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

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
825.	25.	Who may serve on courts-martial.
825a.	25a.	Number of members in capital cases.
826.	26.	Military judge of a general or special court-martial.
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Absent and additional members.

AMENDMENTS

2001—Pub. L. 107-107, div. A, title V, §582(b)(2), Dec. 28, 2001, 115 Stat. 1124, added item 825a.

1968—Pub. L. 90-632, §2(8), Oct. 24, 1968, 82 Stat. 1336, substituted “Military judge of a general or special court-martial” for “Law officer of a general court-martial” in item 826.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

- (1) the President of the United States;
- (2) the Secretary of Defense;
- (3) the commanding officer of a unified or specified combatant command;
- (4) the Secretary concerned;
- (5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
- (6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
- (7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;
- (8) any other commanding officer designated by the Secretary concerned; or
- (9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 99-433, title II, §211(b), Oct. 1, 1986, 100 Stat. 1017; Pub. L. 109-163, div. A, title X, §1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
822(a)	50:586(a).	May 5, 1950, ch. 169, §1 (Art. 22), 64 Stat. 115.
822(b)	50:586(b).	

Subsection (a)(2) is substituted for the words “the Secretary of a Department”.

In subsection (a)(4), the words “continental limits of the” are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words “any other commanding officer” are substituted for the words “such other commanding officers as may be”.

In subsection (b), the word “IF” is substituted for the word “When”. The words “if considered” are substituted for the words “when deemed”.

AMENDMENTS

2006—Subsec. (a)(5). Pub. L. 109-163 struck out “a Territorial Department,” before “an Army Group”.

1986—Subsec. (a)(2) to (9). Pub. L. 99-433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- (7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
823(a)	50:587(a).	May 5, 1950, ch. 169, §1 (Art. 23), 64 Stat. 115.
823(b)	50:587(b).	

In subsection (a)(7), the words “Secretary concerned” are substituted for the words “Secretary of a Department”.