[H.A.S.C. No. 98–10]

FULL COMMITTEE CONSIDERATION

OF

S. 974

[AS AMENDED]

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

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

NOVEMBER 15, 1983

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NINETY-EIGHTH CONGRESS, FIRST SESSION

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S. 974—TO AMEND CHAPTER 47 OF TITLE 10, UNITED STATES CODE, TO IMPROVE THE QUALITY AND EFFICIENCY OF THE MILITARY JUSTICE SYSTEM, TO REVISE THE LAWS CONCERNING REVIEW OF COURTS-MARTIAL, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., Tuesday, November 15, 1983.

The committee met, pursuant to call, at 11:29 a.m., in room 2118, Rayburn House Office Building, Hon. Melvin Price (chairman of the committee) presiding.

The CHAIRMAN. We will now receive a report from Mr. Montgomery on S. 974, as amended, the Military Justice Act of 1983.

Mr. HOGAN. We have at the table with us, Mr. Effron, who is the Special Assistant to the General Counsel in the Office of the Secretary of Defense for Military Justice Matters, who has worked on this bill for some 3 years and would be happy to assist us with any questions.

The CHAIRMAN. Mr. Montgomery.

STATEMENT OF HON. G. V. (SONNY) MONTGOMERY, A REPRESENTATIVE FROM MISSISSIPPI, MEMBER, MILITARY PERSONNEL AND COMPENSATION SUBCOMMITTEE

Mr. MONTGOMERY. I don't think we need any assistance. This is a very simple bill. It is S. 974, known as the Military Justice Act of 1983, with an amendment of the nature of a substitute which contains a series of technical amendments to the Senate bill that has passed in the other body.

The substance of the Senate bill in our substitute is basically the same. I'll just touch some points that the bill actually covers. This legislation has been in the making since the Military Personnel and Compensation Subcommittee held a hearing on an earlier bill back in March 1980. The bill would streamline the paperwork process originally built into the system with the enactment of the Uniform Code of Military Justice in 1950.

This development is now timely after some 30-plus years of experience with the code. Mr. Chairman, probably the most important feature of the legislation is the provision that would establish for the first time direct access to the Supreme Court for a review of decisions by the Court of Military Appeals. This is a landmark feature and a significant step forward in the military justice system.

Finally, Mr. Chairman, the bill would establish a punitive article prescribing drug abuse offenses in the military. This has become necessary because of the drug problems in the military. This bill has the endorsement of the Secretary of Defense, the service chiefs, the Judge Advocates General, the Coast Guard, the Court of Military Appeals, the American Bar Association, the Association of the Bar of the City of New York, the American Civil Liberties Union, and others active in the military and civilian bar.

I know of no opposition to the legislation.

WRITTEN STATEMENT OF HON. G. V. (SONNY) MONTGOMERY

Mr. Chairman, I am pleased to report S. 974, the Military Justice Act of 1983, with an amendment in the nature of a substitute which contains a series of technical amendments to the Senate bill as passed in the other body. The substance of the Senate bill and our substitute is basically the same.

This legislation has been in the making since the Military Personnel and Compensation Subcommittee held a hearing on an earlier bill in March 1980. Over the intervening years through a series of studies and consultations with representatives of the military and civilian bar, this legislation emerged.

It would streamline the paperwork process originally built into the system with the enactment with the Uniform Code of Military Justice in 1950. This development is now timely after some 30 plus years of experience with the code.

Also, there is a provision that would allow the accused to waive automatic appellate review except in death sentence cases. In addition, the post-trial review by the person who convened the court would be retained, but emphasis would be placed primarily on the determination as to whether the sentence should be reduced as a matter of command prerogative rather than a formal review. The Staff Judge Advocate would continue to advise the Commander on legal aspects of the case.

Probably the most important feature of the legislation is the provision that would establish, for the first time, direct access to the Supreme Court for a review of decisions by the Court of Military Appeals. This is a landmark feature and a significant step forward in the military justice system.

Finally, Mr. Chairman, the bill would establish a punitive article proscribing drug abuse offenses in the military. This has become necessary due to the seriousness of the drug offense matter and, therefore, the necessity for a distinct and common punitive article in all of the military services.

Mr. Chairman, this legislation has the endorsement of the Secretary of Defense, the service chiefs, the Judge Advocates General, the Coast Guard, the Court of Military Appeals, the American Bar Association, the Association of the Bar of the City of New York, the American Civil Liberties Union, and others active in the military and civilian bar. I know of no opposition to the legislation and urge its approval by the committee.

STATEMENT OF HON. ELWOOD H. (BUD) HILLIS, A REPRESENTATIVE FROM INDIANA, RANKING MINORITY MEMBER, MILITARY PERSONNEL AND COMPENSATION SUBCOMMITTEE

Mr. HILLIS. I concur in the comments of my distinguished colleague. And I think, too, that the time has come to eliminate some of the administrative paperwork now that the system has proven itself and that we have professional military lawyers at each level of action.

In addition, the military judiciary has developed into a highly professional and competent element of the system which further justifies streamlining the earlier administrative and ministerial requirements. Also, Mr. Chairman, I strongly support the amendment to the Uniform Code providing for an appeal to the Supreme Court. While this right would be limited to cases decided by the Court of Military Appeals, it does afford an opportunity for consideration on direct appeal of military cases by the Supreme Court.

As my colleague, Mr. Montgomery, has indicated, we know of no opposition to the bill and I, too, urge its adoption.

WRITTEN STATEMENT OF HON. ELWOOD H. (BUD) HILLIS, A REPRESENTATIVE FROM INDIANA

Mr. Chairman, I concur in the comments of the gentleman from Mississippi.

After some 30-plus years of experience with the Uniform Code, the time has come to eliminate some of the administrative paperwork now that the system has proven itself, and we have professional military lawyers at each level of action.

In addition, the military judiciary has developed into a highly professional and complimentary element of the system, which further justifies streamlining the earlier administrative and ministerial requirements.

Also, Mr. Chairman, I strongly support the amendment to the Uniform Code providing for appeal to the Supreme Court. While this right would be limited to cases decided by the Court of Military Appeals, it does afford an opportunity for consideration on direct appeal of military cases by the Supreme Court.

As the gentlemen has indicated, we know of no opposition to the bill, and I urge its adoption.

The CHAIRMAN. The vote is on the bill as amended. All those in favor of the passage of the bill will vote aye.

[A chorus of ayes.]

The CHAIRMAN. Those oppose, vote no.

[No response.]

The CHAIRMAN. The ayes have it and the bill is passed as amended. Without objection, if it is not considered under suspension, a unanimous consent request on the floor for the immediate consideration of the bill, S. 974, is approved.

Mr. HOGAN. Technical corrections?

The CHAIRMAN. Without objection.

Mr. MONTGOMERY. The bill will be brought up this afternoon, I assume, Mr. Chairman, if we can get to it. It is 16th on the list.

Mr. HOGAN. Thank you, Mr. Chairman.

[Whereupon, at 11:40 a.m., the hearing was concluded.]

ORIGINAL BILL I

98TH CONGRESS
1ST SESSION

S. 974

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1983

Referred to the Committee on Armed Services

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE; REFERENCES TO THE UNIFORM CODE OF
4 MILITARY JUSTICE

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

1 (b) Whenever in this Act (except in sections 10 and 11)
2 an amendment or repeal is expressed in terms of an amend-
3 ment to, or repeal of, a section or other provision, the refer-
4 ence shall be considered to be made to a section or other
5 provision of chapter 47 of title 10, United States Code (the
6 Uniform Code of Military Justice).

7 DEFINITION OF "JUDGE ADVOCATE"

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

10 "(13) 'Judge advocate' means—

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

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

15 "(C) an officer of the Coast Guard who is desig-
16 nated as a law specialist.".

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

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

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

(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 (article 42) is amended—

(1) by striking out "assistant" before "defense counsel" in the first and third sentences and inserting in lieu thereof "assistant or associate"; and

(2) by striking out ", law specialist," in the first and third sentences.

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

(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

SEC. 3. (a) Section 816(1)(B) (article 16(1)(B)) is amended by inserting "orally on the record or" before "in writing".

(b) Section 825 (article 25) is amended by adding at the end thereof the following new subsection:

1 "(e) Before the court assembles for the trial of a case,
2 the convening authority may excuse individual court mem-
3 bers from participating in the case. The convening authority
4 may, under regulations prescribed by the Secretary con-
5 cerned, delegate his authority under this subsection to the
6 staff judge advocate, legal officer, or other principal assistant
7 to the convening authority.".

8 (c)(1) Section 826 (article 26) is amended—

9 (A) by striking out subsection (a) and inserting in
10 lieu thereof the following:

11 "(a) Under regulations of the Secretary concerned, a
12 military judge shall be detailed to each general court-martial
13 and, subject to such regulations, may be detailed to any spe-
14 cial court-martial. The military judge shall preside over each
15 open session of the court-martial to which he has been de-
16 tailed."; and

17 (B) in the first sentence of subsection (c), by strik-
18 ing out "The military judge" and all that follows
19 through "unless" and inserting in lieu thereof "The
20 military judge of a general court-martial shall be desig-
21 nated by the Judge Advocate General, or his designee,
22 of the armed force in which the military judge is a
23 member for detail in accordance with the regulations
24 prescribed under subsection (a). Unless".

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1 (2)(A) Section 827(a) (article 27(a)) is amended by strik-
2 ing out the first sentence and inserting in lieu thereof the
3 following: "Under regulations of the Secretary concerned,
4 trial counsel and defense counsel shall be detailed for each
5 general and special court-martial. Such regulations shall also
6 provide that assistant trial counsel and assistant and asso-
7 ciate defense counsel may also be detailed to such courts-
8 martial.".

9 (B) Section 827(a) (article 27(a)) is further amended by
10 striking out "assistant" before "defense counsel" in the
11 second sentence and inserting in lieu thereof "assistant or
12 associate".

13 (d) Section 829(a) (article 29(a)) is amended by striking
14 out "except for" and all that follows through the period and
15 inserting in lieu thereof the following: "unless excused by the
16 military judge as a result of a challenge or for physical dis-
17 ability or for other good cause, or by order of the convening
18 authority for good cause.".

19 (e)(1) Section 838(b)(6) (article 38(b)(6)) is amended by
20 striking out the second sentence and inserting in lieu thereof
21 the following: "The individual empowered to detail counsel
22 under section 827 of this title (article 27), in his sole
23 discretion, may detail additional military counsel as assistant
24 defense counsel and, if the accused is represented by military
25 counsel of his own selection under paragraph (3)(B), may ap-

1 prove a request from the accused that military counsel de-
2 tailed under paragraph (3)(A) act as associate defense coun-
3 sel.".

4 (2) Paragraph (7) of section 838(b) (article 38(b)(7)) is
5 amended by inserting after the first sentence the following
6 new sentence: "Such definition may not prescribe any limita-
7 tion based on the reasonable availability of counsel solely on
8 the grounds that the counsel selected by the accused is from
9 an armed force other than the one of which the accused is a
10 member.".

11 (3) Section 838(c) (article 38(c)) is amended to read as
12 follows:

13 "(c) In any court-martial proceeding resulting in a con-
14 viction, the defense counsel may forward for attachment to
15 the record of proceedings a brief of such matters as he feels
16 should be considered in behalf of the accused on review (in-
17 cluding any objection to the contents of the record which he
18 considers appropriate), may assist the accused in the submis-
19 sion of matters under section 860 of this title (article 60), and
20 shall, subject to regulations of the President, perform other
21 acts authorized by this chapter.".

22 PRETRIAL ADVICE AND REFERRAL OF CHARGES

23 SEC. 4. (a) The second sentence of section 834(a) is
24 amended to read as follows: "The convening authority may
25 not refer a specification under a charge to a general court-

1 martial for trial unless he has been advised in writing by the
2 staff judge advocate that—
3 "(1) the specification alleges an offense under this
4 chapter,
5 "(2) the specification is warranted by the evidence
6 indicated in the report of investigation, if any, and
7 "(3) a court-martial would have jurisdiction over
8 the accused and the offense.".
9 (b) Section 834 (article 34) is further amended by redes-
10 ignating subsection (b) as subsection (c) and inserting after
11 subsection (a) the following new subsection (b):
12 "(b) The advice of the staff judge advocate required
13 under subsection (a) shall include a written and signed state-
14 ment by the staff judge advocate expressing the conclusions
15 of the staff judge advocate with respect to each matter set
16 forth in subsection (a) and the action the staff judge advocate
17 recommends that the convening authority take regarding the
18 specification. If the specification is referred for trial, the rec-
19 ommendation of the staff judge advocate shall accompany the
20 specification.".

21 RIGHT TO APPEAL AND RELATED MATTERS

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

1 **"§ 860. Art. 60. Action by the convening authority**

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

5 "(b)(1) Within thirty days after the sentence of a general
6 court-martial or of a special court-martial which has ad-
7 judged a bad-conduct discharge has been announced, the ac-
8 cused may submit to the convening authority matters for con-
9 sideration by the convening authority with respect to the
10 findings and the sentence. In the case of all other special
11 courts-martial, the accused may make such a submission to
12 the convening authority within twenty days after the sen-
13 tence is announced. In the case of all summary courts-martial
14 the accused may make such a submission to the convening
15 authority within seven days after the sentence is announced.
16 If the accused shows that additional time is required to
17 submit such matters, the convening authority or other person
18 taking action under this section, for good cause, may extend
19 the period—

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

24 "(B) in the case of all other courts-martial, for not
25 more than an additional ten days.

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

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

11 "(4) The accused may waive his right to make a submis-
12 sion to the convening authority under paragraph (1). Such a
13 waiver must be made in writing and may not be revoked. For
14 the purposes of subsection (c)(2), the time within which the
15 accused may make a submission under this subsection shall
16 be deemed to have expired upon the submission of such a
17 waiver to the convening authority.

18 "(c)(1) Exercise of the authority to modify the findings
19 and sentence of a court-martial is a matter of command pre-
20 rogative involving the sole discretion of the convening au-
21 thority. Under regulations of the Secretary concerned, this
22 discretion may be exercised by a commissioned officer com-
23 manding for the time being, a successor in command, or any
24 person exercising general court-martial jurisdiction.

1 "(2) Action on the sentence of a court-martial shall be
2 taken after consideration of any matters submitted by the ac-
3 cused under subsection (b) and, if applicable, under subsection
4 (d), or after the time for submitting such matters expires,
5 whichever is earlier, subject to regulations of the Secretary
6 concerned. The convening authority or other person taking
7 such action, in his sole discretion, may approve, disapprove,
8 commute, or suspend the sentence in whole or in part.
9 "(3) Action on the findings of a court-martial is not re-
10 quired. However, the convening authority or other person
11 taking action on the sentence may, in such person's sole dis-
12 cretion—
13 "(A) dismiss any charge or specification by setting
14 aside a finding of guilty thereto; or
15 "(B) change to an appropriate lesser included of-
16 fense a finding of guilty to a charge or specification.
17 "(d) Before acting under this section on any general
18 court-martial case or any special court-martial case that in-
19 cludes a bad-conduct discharge, the convening authority or
20 other person taking action under this section shall consider
21 the written recommendation of his staff judge advocate or
22 legal officer. The convening authority or other person taking
23 action under this section shall refer the record of trial to his
24 staff judge advocate or legal officer and the staff judge advo-
25 cate or legal officer shall use such record in the preparation

1 of his recommendation. The recommendation of the staff
2 judge advocate or legal officer shall include such matters as
3 the President may prescribe and shall be served on the ac-
4 cused, who shall have five days from the date of receipt in
5 which to submit any matter in response. The convening au-
6 thority or other person taking action under this section, for
7 good cause, may extend that period for up to an additional
8 twenty days. Failure to object in the response to the recom-
9 mendation or to any matters attached thereto waives the
10 right to object thereto.

11 "(e)(1) The convening authority or other person taking
12 action under this section, in his sole discretion, may order
13 proceedings in revision or a rehearing.

14 "(2) Proceedings in revision may be ordered when there
15 is an apparent error or omission in the record or when the
16 record shows improper or inconsistent action with respect to
17 the findings or sentence that can be rectified without material
18 prejudice to the substantial rights of the accused. In no case,
19 however, may a proceeding in revision—

20 "(A) reconsider a finding of not guilty of any
21 specification or a ruling which amounts to a finding of
22 not guilty;

23 "(B) reconsider a finding of not guilty of any
24 charge, unless there has been a finding of guilty under

1 a specification laid under that charge, which sufficient-
2 ly alleges a violation of some article of this chapter; or
3 "(C) increase the severity of the sentence unless
4 the sentence prescribed for the offense is mandatory.
5 "(3) A rehearing may be ordered by the convening au-
6 thority or other person taking action under this section if he
7 disapproves the findings and sentence and states the reasons
8 for disapproval of the findings. If such person disapproves the
9 findings and sentence and does not order a rehearing, he shall
10 dismiss the charges. A rehearing as to the findings may not
11 be ordered where there is a lack of sufficient evidence in the
12 record to support the findings. A rehearing as to the sentence
13 may be ordered if the convening authority or other person
14 taking action under this subsection disapproves the sen-
15 tence.".
16 (2) The item in the table of sections at the beginning of
17 subchapter IX is amended to read as follows:

"860. 60. Action by the convening authority.".

18 (b)(1) Section 861 (article 61) is amended to read as
19 follows:
20 **"§ 861. Art. 61. Waiver or withdrawal of appeal**
21 "(a) In each case subject to review under sections 866
22 (article 66) or 869(a) (article 69(a)) of this title, except a case
23 in which the sentence as approved under section 860(c) of
24 this title (article 60(c)) includes death, the accused may file
25 with the convening authority a statement expressly waiving

1 the right to appellate review. An express waiver of the right
2 to appellate review shall be signed by the accused and de-
3 fense counsel. The statement shall be filed within ten days
4 after the action under section 860(c) of this title (article
5 60(c)) is served on the accused or his counsel. The convening
6 authority, for good cause, may extend that period for not
7 more than thirty additional days.

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

11 "(c) A waiver or withdrawal of an appeal under this
12 section bars review under section 866 (article 66) or 869(a)
13 (article 69(a)) of this title.".

14 (2) The item in the table of sections at the beginning of
15 subchapter IX is amended to read as follows:

"861. 61. Waiver or withdrawal of appeal.".

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

18 **"§ 862. Art. 62. Appeal by the United States**

19 "(a) In any trial by court-martial over which a military
20 judge presides and in which a punitive discharge may be ad-
21 judged, the United States may appeal any order or ruling
22 that terminates the proceedings with respect to a charge or
23 specification or which excludes evidence that is substantial
24 proof of a fact material in the proceeding, except that no such
25 appeal shall lie from an order or ruling that is, or amounts to,

1 a finding of not guilty. The trial counsel shall provide the
2 military judge with written notice of appeal from an order or
3 ruling authorized to be appealed under this section within
4 seventy-two hours of such order or ruling. Such notice shall
5 include a certification that the appeal is not taken for the
6 purpose of delay and, when applicable, that the evidence is
7 substantial proof of a fact material in the proceeding. If the
8 United States takes an appeal under this section, appellate
9 counsel shall diligently prosecute the appeal.

10 "(b) An appeal under this section shall be forwarded by
11 an appropriate means directly to the Court of Military
12 Review and shall, whenever practicable, have priority over
13 all other proceedings before that court. In determining an
14 appeal under this section, such Court of Military Review may
15 take action only with respect to matters of law, notwith-
16 standing section 866(c) of this title (article 66(c)).

17 "(c) Any period of delay resulting from an appeal under
18 this section shall be excluded in deciding any issue regarding
19 denial of a speedy trial, unless it is determined that the
20 appeal was filed solely for the purpose of delay with the
21 knowledge that it was totally frivolous and without merit.".

22 (2) The item in the table of sections at the beginning of
23 subchapter IX is amended to read as follows:

"862. 62. Appeal by the United States.".

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

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

1 (2) in subsection (b)—

2 (A) by striking out "(b)";

3 (B) by inserting "authorized under this chap-

4 ter" after "Each rehearing"; and

5 (C) by inserting at the end thereof the fol-

6 lowing: "If the sentence approved after the first

7 court-martial was in accordance with a pretrial

8 agreement and the accused at the rehearing

9 changes his plea with respect to the charges or

10 specifications upon which the pretrial agreement

11 was based, or otherwise does not comply with the

12 pretrial agreement, the sentence as to those

13 charges or specifications may include any punish-

14 ment not in excess of that adjudged lawfully at

15 the initial trial.".

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

17 (1) by striking out subsection (a) and inserting in

18 lieu thereof the following:

19 "(a) That part of a court-martial sentence providing for

20 death may not be executed until approved by the President.

21 In such a case, the President may commute, remit, or sus-

22 pend the sentence, or any part thereof, as he sees fit. That

23 part of the sentence providing for death may not be

24 suspended.";

1 (2) in subsection (b), by striking out the first and
2 second sentences and inserting in lieu thereof the fol-
3 lowing: "In any case in which the sentence provides
4 for the dismissal of a commissioned officer, cadet, or
5 midshipman, that part of the sentence providing for
6 dismissal may not be executed until approved by the
7 Secretary concerned or such Under Secretary or As-
8 sistant Secretary as may be designated by the Secre-
9 tary concerned. In such a case, the Secretary, Under
10 Secretary, or Assistant Secretary, as the case may be,
11 may commute, remit, or suspend the sentence, or any
12 part thereof, as he sees fit."; and
13 (3) by striking out subsections (c) and (d) and in-
14 serting in lieu thereof the following:
15 "(c)(1) If appellate review is not waived or withdrawn
16 under section 861 of this title (article 61), that part of a sen-
17 tence extending to death, dismissal, or a dishonorable or bad-
18 conduct discharge may not be executed until there is a final
19 judgment under this chapter as to the legality of the proceed-
20 ings (and with respect to death or dismissal, approval under
21 subsection (a) or (b), as appropriate). A judgment as to legal-
22 ity of the proceedings is final in such cases when review is
23 completed by a Court of Military Review and—

"(A) the accused does not file a timely petition for review by the Court of Military Appeals and the case is not otherwise under review by that Court;

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

"(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 appellate review is waived or withdrawn under section 861 of this title (article 61), that part of a sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review and action thereon is completed under section 864 of this title (article 64). Any other part of a court-martial sentence may be ordered executed by the convening authority when approved by him.

"(d) The convening authority may suspend the execution of any sentence or part thereof, except a death sentence.".

1 (f) Subsection (a) of section 857 (article 57(a)) is
2 amended to read as follows:
3 "(a) No forfeiture may extend to any pay or allowances
4 accrued before the date on which the sentence is approved by
5 the person acting under section 860(c) of this title (article
6 60(c)).".
7 (g) Section 876a (article 76a) is amended—
8 (1) by striking out "864 or 865 of this title (arti-
9 cle 64 or 65) by the officer exercising general court-
10 martial jurisdiction" and inserting in lieu thereof "860
11 of this title (article 60)"; and
12 (2) by striking out "by the officer exercising gen-
13 eral court-martial jurisdiction" the second time it ap-
14 pears and inserting in lieu thereof "under section 860
15 of this title (article 60)".
16 (h)(1) The table of subchapters at the beginning of chap-
17 ter 47 is amended by striking out the item relating to sub-
18 chapter IX and inserting in lieu thereof the following:

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

19 (2) The subchapter heading at the beginning of sub-
20 chapter IX is amended to read as follows:

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

23 RECORD OF TRIAL

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

1 "(14) 'Record', when used in connection with the pro-
2 ceedings of a court-martial, means—
3 "(A) an official written transcript, summary, or
4 other writing relating to the proceedings, or
5 "(B) an official audiotape, videotape, or similar
6 material from which sound or sound and visual images
7 may be reproduced depicting the proceedings.".
8 (b) Subsections (d) and (f) of section 849 (article 49) are
9 each amended by inserting after "read in evidence" the fol-
10 lowing: "or, in the case of audiotape, videotape, or similar
11 material, may be played".
12 (c) Section 854 (article 54) is amended—
13 (1) in subsection (a), by striking out the last sen-
14 tence;
15 (2) in subsection (b), by striking out "shall contain
16 the matter and";
17 (3) by redesignating subsection (c) as subsection
18 (d); and
19 (4) by inserting after subsection (b) the following
20 new subsection:
21 "(c)(1) A complete record of the proceedings and testi-
22 mony shall be prepared in all general court-martial cases in
23 which the sentence adjudged includes death, a dismissal, a
24 discharge, or, if the sentence adjudged does not include a
25 discharge, any other punishment which exceeds that which

1 can otherwise be adjudged by a special court-martial and in
2 all special court-martial cases in which the sentence adjudged
3 includes a bad-conduct discharge.
4 "(2) In all other cases, the record shall contain such
5 matter as the President may prescribe.".
6 (d)(1) Section 865 (article 65) is amended to read as
7 follows:

8 **"§ 865. Art. 65. Disposition of records**

9 "(a) In a case subject to appellate review under section
10 866 (article 66) or 869(a) (article 69(a)) of this title in which
11 such review is not waived or withdrawn under section 861 of
12 this title (article 61), the record of trial and action thereon
13 shall be transmitted to the Judge Advocate General for ap-
14 propriate action.
15 "(b) Except as otherwise required by this chapter, all
16 other records of trial and related documents shall be trans-
17 mitted and disposed of as the Secretary concerned may pre-
18 scribe by regulation.".
19 (2) The item relating to section 865 in the table of sec-
20 tions at the beginning of subchapter IX is amended to read as
21 follows:

"865. 65. Disposition of records.".

22 REVIEW OF COURTS-MARTIAL AND RELATED MATTERS

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

1 "§ 864. Art. 64. Review by a judge advocate

2 "(a) Each case in which there has been a finding of
3 guilty that is not reviewed under section 866 (article 66) or
4 869(a) (article 69(a)) of this title shall be reviewed by a judge
5 advocate under regulations of the Secretary concerned. A
6 person is not eligible to review a case under this subsection if
7 he has acted in the same case as an accuser, investigating
8 officer, member of the court, military judge, or counsel, or
9 has otherwise acted on behalf of the prosecution or defense.
10 The judge advocate's review shall be in writing and shall
11 contain the following:

12 "(1) Conclusions as to whether—

13 "(A) the court had jurisdiction over the ac-
14 cused and the offense,

15 "(B) the charge and specification stated an
16 offense, and

17 "(C) the sentence was within the limits pre-
18 scribed as a matter of law.

19 "(2) A response to each written allegation of error
20 made by the accused.

21 "(3) If the case is forwarded under subsection (b),
22 a recommendation as to the appropriate action to be
23 taken and an opinion as to whether corrective action is
24 required as a matter of law.

25 "(b) The record of trial and related documents in cases
26 reviewed under subsection (a) shall be transmitted for action

1 to the officer exercising general court-martial jurisdiction
2 over the accused at the time the court was convened (or to
3 that officer's successor in command) when—
4 "(1) the judge advocate who reviewed the case
5 recommends corrective action;
6 "(2) the sentence approved under section 860(c)
7 of this title (article 60(c)) extends to dismissal, a bad-
8 conduct or dishonorable discharge, or confinement for
9 more than six months; or
10 "(3) such action is otherwise required by regula-
11 tions of the Secretary concerned.
12 "(c)(1) The officer to whom the record of trial and relat-
13 ed documents are transmitted under subsection (b) may—
14 "(A) disapprove or approve the findings or sen-
15 tence, in whole or in part;
16 "(B) remit, commute, or suspend the sentence in
17 whole or in part;
18 "(C) except where the evidence was insufficient at
19 the trial to support the findings, order a rehearing on
20 the findings, the sentence, or both; or
21 "(D) dismiss the charges.
22 "(2) If a rehearing is ordered but the convening authori-
23 ty finds a rehearing impracticable, he shall dismiss the
24 charges.

1 "(3) If the judge advocate states that corrective action is
2 required as a matter of law and the officer required to take
3 action under subsection (c) of this section does not take action
4 that is at least as favorable to the accused as that recom-
5 mended by the judge advocate, the record of trial and action
6 thereon shall be sent to the Judge Advocate General for
7 review under section 869(b) of this title (article 69(b)).".
8 (2) The item relating to section 864 in the table of sec-
9 tions at the beginning of subchapter IX is amended to read as
10 follows:

"864. 64. Review by a judge advocate.".

11 (b) Section 866(a) (article 66(a)) is amended by inserting
12 after the second sentence the following new sentence: "Any
13 decision of a panel may be reconsidered by the court sitting
14 as a whole in accordance with such rules.".
15 (c) Section 866(b) (article 66(b)) is amended to read as
16 follows:
17 "(b) The Judge Advocate General shall refer to a Court
18 of Military Review the record in every case of trial by court-
19 martial—
20 "(1) in which the sentence as approved, extends
21 to death; or
22 "(2) in which—
23 "(A) the sentence, as approved, extends to
24 dismissal of a commissioned officer, a cadet, or

1 midshipman, dishonorable or a bad-conduct dis-
2 charge, or confinement for one year or more; and
3 "(B) the right to appellate review has not
4 been waived or an appeal withdrawn under sec-
5 tion 861 of this title (article 61).".
6 (d) Section 867(b)(1) (article 67(b)(1)) is amended by
7 striking out "affects a general or flag officer or".
8 (e)(1) The text of section 869 (article 69) is amended to
9 read as follows:
10 "(a) The record of trial in each general court-martial
11 that is not otherwise reviewed under section 866 of this title
12 (article 66) shall be examined in the office of the Judge Ad-
13 vocate General if there is a finding of guilty and the accused
14 does not waive or withdraw his right to appellate review
15 under section 861 of this title (article 61). If any part of the
16 findings or sentence is found to be unsupported in law or if
17 reassessment of the sentence is appropriate, the Judge Advo-
18 cate General may modify or set aside the findings or sentence
19 or both. If the Judge Advocate General so directs, the record
20 shall be reviewed by a Court of Military Review under sec-
21 tion 866 of this title (article 66), but in that event there may
22 be no further review by the Court of Military Appeals except
23 under section 867(b)(2) of this title (article 67(b)(2)).
24 "(b) The findings or sentence or both in a court-martial
25 case not reviewed under subsection (a) or under section 866

1 of this title (article 66) may be modified or set aside by the
2 Judge Advocate General on the ground of newly discovered
3 evidence, fraud on the court, lack of jurisdiction over the ac-
4 cused or the offense, error prejudicial to the substantial rights
5 of the accused, or the appropriateness of the sentence. If such
6 a case is considered upon application of the accused, the ap-
7 plication must be filed in the office of the Judge Advocate
8 General by the accused on or before the last day of the two-
9 year period beginning on the date the sentence is approved
10 under section 860(c) of this title (article 60(c)), unless the
11 accused establishes good cause for failure to file within that
12 time.

13 "(c) If the Judge Advocate General sets aside the find-
14 ings or sentence, he may, except when the setting aside is
15 based on lack of sufficient evidence in the record to support
16 the findings, order a rehearing. If he sets aside the findings
17 and sentence and does not order a rehearing, he shall order
18 that the charges be dismissed. If the Judge Advocate Gener-
19 al orders a rehearing but the convening authority finds a re-
20 hearing impractical, the convening authority shall dismiss the
21 charges.".

22 (2) The two-year period specified under the second sen-
23 tence of section 869(b) (article 69(b)), as amended by para-
24 graph (1), does not apply to any application filed in the office
25 of the Judge Advocate General of the appropriate armed

1 force on or before October 1, 1983. The application in such a
2 case shall be considered in the same manner and with the
3 same effect as if such two-year period had not been enacted.

4 CONTROLLED SUBSTANCES

5 SEC. 8. Chapter 47 is amended—

6 (1) by inserting the following new section after
7 section 912:

8 **"§ 912a. Art. 112a. Controlled substances**

9 "Any person subject to this chapter who wrongfully
10 uses, possesses, manufactures, distributes, imports, exports,
11 or introduces into an installation, vessel, vehicle, or aircraft
12 used by or under the control of the armed forces opium,
13 heroin, cocaine, amphetamine, lysergic acid diethylamide,
14 methamphetamine, phencyclidine, barbituric acid, marijuana,
15 or any compound or derivative thereof or any other drug or
16 substance that is listed in schedules I through V of section
17 202 of the Controlled Substances Act (21 U.S.C. 812), or in
18 any schedule of controlled substances issued by the Presi-
19 dent, shall be punished as a court-martial may direct."; and

20 (2) by inserting in the table of sections at the be-
21 ginning of subchapter X immediately below the item
22 relating to section 912 the following new item:

"912a. 112a. Controlled substances.".

23 THE CODE COMMITTEE

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

1 (1) by striking out "The Court of Military Appeals
2 and the Judge Advocates General" and by inserting in
3 lieu thereof "A committee consisting of the Court of
4 Military Appeals, the Judge Advocates General of the
5 Army, Navy, and Air Force, the Chief Counsel, United
6 States Coast Guard, the Director, Judge Advocate Di-
7 vision, Headquarters, United States Marine Corps, and
8 two members of the public appointed by the Secretary
9 of Defense";
10 (2) by inserting "at least" before "annually"; and
11 (3) by inserting at the end thereof the following
12 new sentence: "Each public member of the committee
13 shall be a recognized authority in military justice or
14 criminal law and shall be appointed for a term of three
15 years. The Federal Advisory Committee Act (5 U.S.C.
16 App. I) shall not apply to the committee established
17 under this subsection.".
18 (b)(1) The Secretary of Defense shall establish a com-
19 mission to study and make recommendations concerning the
20 following matters:
21 (A) Whether the sentencing authority in court-
22 martial cases should be exercised by a military judge in
23 all noncapital cases to which a military judge has been
24 detailed.

1 (B) Whether a military judge and the Courts of
2 Military Review should have the power to suspend sen-
3 tences.
4 (C) Whether the jurisdiction of the special court-
5 martial should be expanded to permit adjudgment of
6 sentences including confinement of up to one year, and
7 what, if any, changes should be made to current appel-
8 late jurisdiction.
9 (D) Whether military judges, including those pre-
10 siding at special and general courts-martial and those
11 sitting on the Courts of Military Review, should have
12 tenure.
13 (E) What should be the elements of a fair and
14 equitable retirement system for the judges of the
15 United States Court of Military Appeals.
16 (2) The commission shall consist of seven members, at
17 least three of whom shall be persons from private life who
18 are recognized authorities in military justice or criminal law.
19 (3) The commission shall prepare a comprehensive
20 report in support of its recommendations on the matters set
21 forth in paragraph (1), and shall also include in such report
22 its findings and comments on the following matters:
23 (A) The experience in the civilian sector with jury
24 sentencing and judge-alone sentencing, with particular
25 reference to consistency, uniformity, sentence appropri-

1 ateness, efficiency in the sentencing process, and
2 impact on the rights of the accused.
3 (B) The potential impact of mandatory judge-alone
4 sentencing on the Armed Forces, with particular refer-
5 ence to consistency, uniformity, sentence appropriate-
6 ness, efficiency in the sentencing process, impact on
7 the rights of the accused, effect on the participation of
8 members of the Armed Forces in the military justice
9 system, impact on relationships between judge advo-
10 cates and other members of the Armed Forces, and
11 impact on the perception of the military justice system
12 by members of the Armed Forces, the legal profession,
13 and the general public.
14 (C) The likelihood of a reduction in the number of
15 general court-martial cases in the event the confine-
16 ment jurisdiction of the special court-martial is expand-
17 ed; the additional protections that should be afforded
18 the accused if such jurisdiction is expanded; whether
19 the minimum number of members prescribed by law for
20 a special court-martial should be increased; and wheth-
21 er the appellate review process should be modified so
22 that a greater number of cases receive review by the
23 military appellate courts, in lieu of legal reviews pres-
24 ently conducted in the offices of the Judge Advocates
25 General and elsewhere, especially if the commission

1 determines that the special court-martial jurisdiction
2 should be expanded.
3 (D) The effectiveness of the present systems for
4 maintaining the independence of military judges and
5 what, if any, changes are needed in these systems to
6 ensure maintenance of an independent military judici-
7 ary, including a term of tenure for such judges consist-
8 ent with efficient management of military judicial re-
9 sources.
10 (4) The commission shall transmit its report to the Com-
11 mittees on Armed Services of the Senate and the House of
12 Representatives and to the committee established under sec-
13 tion 867(g) (article 67(g)) of title 10, United States Code, not
14 later than the first day of the ninth calendar month that
15 begins after the date of enactment of this Act. Not later than
16 the first day of the third calendar month that begins after
17 receipt of such report, the committee established under sec-
18 tion 867(g) (article 67(g)) of such title shall submit such com-
19 ments on the report as it considers appropriate to the Com-
20 mittees on Armed Services of the Senate and the House of
21 Representatives and to the Secretary of Defense, the Secre-
22 taries of the military departments, and the Secretary of
23 Transportation.
24 (5) The Secretary shall ensure that the commission is
25 provided with appropriate and adequate office space, together

1 with such equipment, office supplies, and communications
2 facilities and services as may be necessary for the operation
3 of such offices, and shall provide necessary maintenance serv-
4 ices for such offices and the equipment and facilities located
5 therein.

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

8 SUPREME COURT REVIEW

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

12 **"§ 1259. Court of Military Appeals; certiorari**

13 "Decisions of the United States Court of Military Ap-
14 peals may be reviewed by the Supreme Court by writ of cer-
15 tiorari in the following cases:

16 "(1) Cases reviewed by the Court of Military Ap-
17 peals under section 867(b)(1) of title 10.

18 "(2) Cases certified to the Court of Military Ap-
19 peals by the Judge Advocate General under section
20 867(b)(2) of title 10.

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

1 "(4) Cases, other than those described in para-
2 graphs (1), (2), and (3) of this subsection, in which the
3 Court of Military Appeals granted relief.".
4 (2) The table of sections at the beginning of chapter 81
5 of such title is amended by adding at the end thereof the
6 following new item:

"1259. Court of Military Appeals; certiorari.".

7 (b) Section 2101 of title 28, United States Code, is
8 amended by adding at the end thereof the following new sub-
9 section:
10 "(g) The time for application for a writ of certiorari to
11 review a decision of the United States Court of Military Ap-
12 peals shall be as prescribed by rules of the Supreme Court.".
13 (c)(1) Section 866(e) (article 66(e)) is amended by strik-
14 ing out "or the Court of Military Appeals" and inserting in
15 lieu thereof "the Court of Military Appeals, or the Supreme
16 Court".
17 (2) Section 867 (article 67) is amended by adding at the
18 end thereof the following new subsection:
19 "(h)(1) Decisions of the Court of Military Appeals are
20 subject to review by the Supreme Court by writ of certiorari
21 as provided in section 1259 of title 28. The Supreme Court
22 may not review by such writ of certiorari any action of the
23 Court of Military Appeals in refusing to grant a petition for
24 review.

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

5 (3)(A) Section 870(b) (article 70(b)) is amended by
6 adding at the end thereof the following new sentence: "Ap-
7 pellate Government counsel may represent the United States
8 before the Supreme Court in cases arising under this chapter
9 when requested to do so by the Attorney General.".

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

12 "(c) Appellate defense counsel shall represent the ac-
13 cused before the Court of Military Review, the Court of Mili-
14 tary Appeals, or the Supreme Court—

15 "(1) when requested by the accused;

16 "(2) when the United States is represented by
17 counsel; or

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

20 "(d) The accused has the right to be represented before
21 the Court of Military Review, the Court of Military Appeals,
22 or the Supreme Court by civilian counsel if provided by
23 him.".

1 CORRECTION OF RECORDS; DISCHARGE REVIEW

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

5 "(f) With respect to records of courts-martial and relat-
6 ed administrative records pertaining to court-martial cases
7 tried after May 4, 1950, the action under subsection (a) may
8 extend only to—

9 "(1) correction of a record to reflect actions taken
10 by reviewing authorities under chapter 47 of this title;
11 or

12 "(2) action on the sentence of a court-martial for
13 purposes of clemency.".

14 (b) Section 1553 of such title is amended by adding at
15 the end of subsection (a) the following new sentence: "With
16 respect to a discharge or dismissal adjudged by a court-mar-
17 tial case tried after May 4, 1950, the action under this sub-
18 section may extend only to a change in the discharge or dis-
19 missal for purposes of clemency.".

20 EFFECTIVE DATE; CONFORMING AMENDMENT

21 SEC. 12. (a)(1) The amendments made by this Act shall
22 take effect on the first day of the eighth calendar month that
23 begins after the date of enactment of this Act, except that the
24 amendments made by sections 9 and 11 shall be effective on
25 the date of the enactment of this Act. The amendments made

1 by section 11 shall only apply with respect to cases filed after
2 the date of enactment of this Act with the boards established
3 under sections 1552 and 1553 of title 10, United States
4 Code.

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

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

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

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

1 (b) Section 7(b)(1) of the Military Justice Amendments
2 of 1981 (95 Stat. 1089; 10 U.S.C. 706 note) is amended to
3 read as follows:
4 "(b)(1) The amendments made by section 2 shall apply
5 to each member whose sentence by court-martial is approved
6 on or after January 20, 1982—
7 "(A) under section 864 or 865 (article 64 or 65)
8 of title 10, United States Code, by the officer exercis-
9 ing general court-martial jurisdiction under the provi-
10 sions of such section as it existed on the day before the
11 effective date of the Military Justice Act of 1983; or
12 "(B) under section 860 (article 60) of title 10,
13 United States Code, by the officer empowered to act
14 on the sentence on or after the effective date of the
15 Military Justice Act of 1983.".

Passed the Senate April 28 (legislative day, April 26), 1983.

Attest: WILLIAM F. HILDENBRAND,
Secretary.

AS AMENDED

[COMMITTEE PRINT]

NOVEMBER 10, 1983

[Showing the bill with the Amendment in the Nature of a Substitute recommended by the Subcommittee on Military Personnel and Compensation]

98TH CONGRESS
1ST SESSION

S. 974

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1983

Referred to the Committee on Armed Services

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of bill as referred in the House, see copy of bill as referred on May 4, 1983]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 *SHORT TITLE; REFERENCES TO THE UNIFORM CODE OF*
2 *MILITARY JUSTICE*

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

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

11 *INCLUSION OF LAW SPECIALISTS OF THE COAST GUARD*
12 *WITHIN DEFINITION OF JUDGE ADVOCATE*

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

15 *"(13) 'Judge advocate' means—*

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

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

20 *"(C) an officer of the Coast Guard who is desig-*
21 *nated as a law specialist.".*

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

(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".

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

(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.

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

(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

SEC. 3. (a) Section 816(1)(B) (article 16(1)(B)) is amended by inserting "orally on the record or" before "in writing".

(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.".

(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".

(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".

(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.".

(e)(1) Section 838(b)(6) (article 38(b)(6)) is amended by striking out "a convening authority" and inserting in lieu

1 *thereof "the person authorized under regulations prescribed*
2 *under section 827 of this title (article 27) to detail counsel".*
3 *(2) Paragraph (7) of section 838(b) (article 38(b)(7)) is*
4 *amended by inserting after the first sentence the following*
5 *new sentence: "Such regulations may not prescribe any limi-*
6 *tation based on the reasonable availability of counsel solely*
7 *on the grounds that the counsel selected by the accused is*
8 *from an armed force other than the armed force of which the*
9 *accused is a member.".*
10 *(3) Section 838(c) (article 38(c)) is amended to read as*
11 *follows:*
12 *"(c) In any court–martial proceeding resulting in a con-*
13 *viction, the defense counsel—*
14 *"(1) may forward for attachment to the record of*
15 *proceedings a brief of such matters as he determines*
16 *should be considered in behalf of the accused on review*
17 *(including any objection to the contents of the record*
18 *which he considers appropriate);*
19 *"(2) may assist the accused in the submission of*
20 *any matter under section 860 of this title (article 60);*
21 *and*
22 *"(3) may take other action authorized by this*
23 *chapter.".*
24 *(f) Section 842(a) (article 42(a)) is amended by strik-*
25 *ing out "assistant defense counsel" in the first and third sen-*

1 *tences and inserting in lieu thereof "assistant or associate*
2 *defense counsel".*

3 *PRETRIAL ADVICE AND REFERRAL OF CHARGES*

4 *SEC. 4. (a)(1) The first sentence of section 834(a) is*
5 *amended by striking out "or legal officer".*

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

11 *"(1) the specification alleges an offense under this*
12 *chapter;*

13 *"(2) the specification is warranted by the evidence*
14 *indicated in the report of investigation under section*
15 *832 of this title (article 32) (if there is such a report);*
16 *and*

17 *"(3) a court-martial would have jurisdiction over*
18 *the accused and the offense.".*

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

22 *"(b) The advice of the staff judge advocate under subsec-*
23 *tion (a) with respect to a specification under a charge shall*
24 *include a written and signed statement by the staff judge*
25 *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:

"§ 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 thirty 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 twenty 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 seven 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 twenty days; and

"(B) in the case of all other courts-martial, for not more than an additional ten 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 seven-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 ten 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

1 *subsection shall be deemed to have expired upon the submis-*
2 *sion of such a waiver to the convening authority.*
3 *"(c)(1) The authority under this section to modify the*
4 *findings and sentence of a court-martial is a matter of com-*
5 *mand prerogative involving the sole discretion of the conven-*
6 *ing authority. Under regulations of the Secretary concerned,*
7 *a commissioned officer commanding for the time being, a suc-*
8 *cessor in command, or any person exercising general court-*
9 *martial jurisdiction may act under this section in place of the*
10 *convening authority.*
11 *"(2) Action on the sentence of a court-martial shall be*
12 *taken by the convening authority or by another person au-*
13 *thorized to act under this section. Subject to regulations of*
14 *the Secretary concerned, such action may be taken only after*
15 *consideration of any matters submitted by the accused under*
16 *subsection (b) and, if applicable, under subsection (d), or*
17 *after the time for submitting such matters expires, whichever*
18 *is earlier. The convening authority or other person taking*
19 *such action, in his sole discretion, may approve, disapprove,*
20 *commute, or suspend the sentence in whole or in part.*
21 *"(3) Action on the findings of a court-martial by the*
22 *convening authority or other person acting on the sentence is*
23 *not required. However, such person, in his sole discretion,*
24 *may—*

1 *"(A) dismiss any charge or specification by set-*
2 *ting aside a finding of guilty thereto; or*
3 *"(B) change a finding of guilty to a charge or*
4 *specification to a finding of guilty to an offense that is*
5 *a lesser included offense of the offense stated in the*
6 *charge or specification.*
7 *"(d) Before acting under this section on any general*
8 *court-martial case or any special court-martial case that in-*
9 *cludes a bad-conduct discharge, the convening authority or*
10 *other person taking action under this section shall obtain and*
11 *consider the written recommendation of his staff judge advo-*
12 *cate or legal officer. The convening authority or other person*
13 *taking action under this section shall refer the record of trial*
14 *to his staff judge advocate or legal officer, and the staff judge*
15 *advocate or legal officer shall use such record in the prepara-*
16 *tion of his recommendation. The recommendation of the staff*
17 *judge advocate or legal officer shall include such matters as*
18 *the President may prescribe by regulation and shall be served*
19 *on the accused, who shall have five days from the date of*
20 *receipt in which to submit any matter in response. The con-*
21 *vening authority or other person taking action under this sec-*
22 *tion, for good cause, may extend that period for up to an*
23 *additional twenty days. Failure to object in the response to*
24 *the recommendation or to any matter attached to the recom-*
25 *mendation waives the right to object thereto.*

1 *"(e)(1) The convening authority or other person taking*
2 *action under this section, in his sole discretion, may order a*
3 *proceeding in revision or a rehearing.*
4 *"(2) A proceeding in revision may be ordered if there is*
5 *an apparent error or omission in the record or if the record*
6 *shows improper or inconsistent action by a court-martial*
7 *with respect to the findings or sentence that can be rectified*
8 *without material prejudice to the substantial rights of the ac-*
9 *cused. In no case, however, may a proceeding in revision—*
10 *"(A) reconsider a finding of not guilty of any*
11 *specification or a ruling which amounts to a finding of*
12 *not guilty;*
13 *"(B) reconsider a finding of not guilty of any*
14 *charge, unless there has been a finding of guilty under*
15 *a specification laid under that charge, which sufficient-*
16 *ly alleges a violation of some article of this chapter; or*
17 *"(C) increase the severity of the sentence unless*
18 *the sentence prescribed for the offense is mandatory.*
19 *"(3) A rehearing may be ordered by the convening au-*
20 *thority or other person taking action under this section if he*
21 *disapproves the findings and sentence and states the reasons*
22 *for disapproval of the findings. If such person disapproves the*
23 *findings and sentence and does not order a rehearing, he*
24 *shall dismiss the charges. A rehearing as to the findings may*
25 *not be ordered where there is a lack of sufficient evidence in*

1 *the record to support the findings. A rehearing as to the sen-*
2 *tence may be ordered if the convening authority or other*
3 *person taking action under this subsection disapproves the*
4 *sentence.".*

5 *(2) The item relating to such section (article) in the*
6 *table of sections at the beginning of subchapter IX is amend-*
7 *ed to read as follows:*

"860. 60. Action by the convening authority.".

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

10 ***"§ 861. Art. 61. Waiver or withdrawal of appeal***

11 *"(a) In each case subject to appellate review under sec-*
12 *tion 866 or 869(a) of this title (article 66 or 69(a)), except a*
13 *case in which the sentence as approved under section 860(c)*
14 *of this title (article 60(c)) includes death, the accused may*
15 *file with the convening authority a statement expressly waiv-*
16 *ing the right of the accused to such review. Such a waiver*
17 *shall be signed by both the accused and by defense counsel*
18 *and must be filed within ten days after the action under sec-*
19 *tion 860(c) of this title (article 60(c)) is served on the accused*
20 *or on defense counsel. The convening authority or other*
21 *person taking such action, for good cause, may extend the*
22 *period for such filing by not more than thirty days.*

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

1 *"(c) A waiver of the right to appellate review or the*
2 *withdrawal of an appeal under this section bars review under*
3 *section 866 or 869(a) of this title (article 66 or 69(a)).".*
4 *(2) The item relating to such section (article) in the*
5 *table of sections at the beginning of subchapter IX is amend-*
6 *ed to read as follows:*

"861. 61. Waiver or withdrawal of appeal.".

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

9 ***"§ 862. Art. 62. Appeal by the United States***

10 *"(a)(1) In a trial by court-martial in which a military*
11 *judge presides and in which a punitive discharge may be*
12 *adjudged, the United States may appeal an order or ruling of*
13 *the military judge which terminates the proceedings with re-*
14 *spect to a charge or specification or which excludes evidence*
15 *that is substantial proof of a fact material in the proceeding.*
16 *However, the United States may not appeal an order or*
17 *ruling that is, or that amounts to, a finding of not guilty with*
18 *respect to the charge or specification.*
19 *"(2) An appeal of an order or ruling may not be taken*
20 *unless the trial counsel provides the military judge with writ-*
21 *ten notice of appeal from the order or ruling within seventy-*
22 *two hours of the order or ruling. Such notice shall include a*
23 *certification by the trial counsel that the appeal is not taken*
24 *for the purpose of delay and (if the order or ruling appealed*

1 *is one which excludes evidence) that the evidence excluded is*
2 *substantial proof of a fact material in the proceeding.*
3 *"(3) An appeal under this section shall be diligently*
4 *prosecuted by appellate Government counsel.*
5 *"(b) An appeal under this section shall be forwarded by*
6 *a means prescribed under regulations of the President direct-*
7 *ly to the Court of Military Review and shall, whenever prac-*
8 *ticable, have priority over all other proceedings before that*
9 *court. In ruling on an appeal under this section, the Court of*
10 *Military Review may act only with respect to matters of law,*
11 *notwithstanding section 866(c) of this title (article 66(c)).*
12 *"(c) Any period of delay resulting from an appeal under*
13 *this section shall be excluded in deciding any issue regarding*
14 *denial of a speedy trial unless an appropriate authority deter-*
15 *mines that the appeal was filed solely for the purpose of delay*
16 *with the knowledge that it was totally frivolous and without*
17 *merit.".*
18 *(2) The item relating to such section (article) in the*
19 *table of sections at the beginning of subchapter IX is amend-*
20 *ed to read as follows:*

"862. 62. Appeal by the United States.".

21 *(d) Section 863 (article 63) is amended—*
22 *(1) by striking out subsection (a); and*
23 *(2) in subsection (b)—*
24 *(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—

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

"(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,

1 *cadet, or midshipman, the sentence of a court-martial*
2 *extends to dismissal, that part of the sentence providing*
3 *for dismissal may not be executed until approved by*
4 *the Secretary concerned or such Under Secretary or*
5 *Assistant Secretary as may be designated by the Sec-*
6 *retary concerned. In such a case, the Secretary, Under*
7 *Secretary, or Assistant Secretary, as the case may be,*
8 *may commute, remit, or suspend the sentence, or any*
9 *part of the sentence, as he sees fit.";* and
10 *(3) by striking out subsections (c) and (d) and in-*
11 *serting in lieu thereof the following:*
12 *"(c)(1) If a sentence extends to death, dismissal, or a*
13 *dishonorable or bad conduct discharge and if the right of the*
14 *accused to appellate review is not waived, and an appeal is*
15 *not withdrawn, under section 861 of this title (article 61),*
16 *that part of the sentence extending to death, dismissal, or a*
17 *dishonorable or bad-conduct discharge may not be executed*
18 *until there is a final judgment as to the legality of the pro-*
19 *ceedings (and with respect to death or dismissal, approval*
20 *under subsection (a) or (b), as appropriate). A judgment as to*
21 *legality of the proceedings is final in such cases when review*
22 *is completed by a Court of Military Review and—*
23 *"(A) the time for the accused to file a petition for*
24 *review by the Court of Military Appeals has expired*
25 *and the accused has not filed a timely petition for such*

1 *review and the case is not otherwise under review by*
2 *that Court;*
3 *"(B) such a petition is rejected by the Court of*
4 *Military Appeals; or*
5 *"(C) review is completed in accordance with the*
6 *judgment of the Court of Military Appeals and—*
7 *"(i) a petition for a writ of certiorari is not*
8 *filed within the time limits prescribed by the Su-*
9 *preme Court;*
10 *"(ii) such a petition is rejected by the Su-*
11 *preme Court; or*
12 *"(iii) review is otherwise completed in ac-*
13 *cordance with the judgment of the Supreme*
14 *Court.*
15 *"(2) If a sentence extends to dismissal or a dishonorable*
16 *or bad conduct discharge and if the right of the accused to*
17 *appellate review is waived, or an appeal is withdrawn, under*
18 *section 861 of this title (article 61), that part of the sentence*
19 *extending to dismissal or a bad-conduct or dishonorable dis-*
20 *charge may not be executed until review of the case by a*
21 *judge advocate (and any action on that review) under section*
22 *864 of this title (article 64) is completed. Any other part of a*
23 *court-martial sentence may be ordered executed by the con-*
24 *vening authority or other person acting on the case under*

1 *section 860 of this title (article 60) when approved by him*
2 *under that section.*
3 *"(d) The convening authority or other person acting on*
4 *the case under section 860 of this title (article 60) may sus-*
5 *pend the execution of any sentence or part thereof, except a*
6 *death sentence.".*
7 *(f) Subsection (a) of section 857 (article 57(a)) is*
8 *amended to read as follows:*
9 *"(a) No forfeiture may extend to any pay or allowances*
10 *accrued before the date on which the sentence is approved by*
11 *the person acting under section 860(c) of this title (article*
12 *60(c)).".*
13 *(g) Section 876a (article 76a) is amended—*
14 *(1) by striking out "864 or 865 of this title (arti-*
15 *cle 64 or 65) by the officer exercising general court-*
16 *martial jurisdiction" and inserting in lieu thereof*
17 *"860 of this title (article 60)"; and*
18 *(2) by striking out "by the officer exercising gen-*
19 *eral court-martial jurisdiction" in the second sentence*
20 *and inserting in lieu thereof "under section 860 of this*
21 *title (article 60)".*
22 *(h)(1) The table of subchapters at the beginning of chap-*
23 *ter 47 is amended by striking out the item relating to sub-*
24 *chapter IX and inserting in lieu thereof the following:*

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

1 *(2) The subchapter heading at the beginning of sub-*
2 *chapter IX is amended to read as follows:*
3 *"SUBCHAPTER IX—POST-TRIAL PROCEDURE*
4 *AND REVIEW OF COURTS-MARTIAL".*
5 *RECORD OF TRIAL*
6 *SEC. 6. (a) Section 801 (article 1) is amended by*
7 *adding at the end thereof the following new clause:*
8 *"(14) 'Record', when used in connection with the*
9 *proceedings of a court-martial, means—*
10 *"(A) an official written transcript, written*
11 *summary, or other writing relating to the proceed-*
12 *ings; or*
13 *"(B) an official audiotape, videotape, or sim-*
14 *ilar material from which sound, or sound and*
15 *visual images, depicting the proceedings may be*
16 *reproduced.".*
17 *(b) Subsections (d) and (f) of section 849 (article 49)*
18 *are each amended by inserting after "read in evidence" the*
19 *following: "or, in the case of audiotape, videotape, or similar*
20 *material, may be played in evidence".*
21 *(c) Section 854 (article 54) is amended—*
22 *(1) in subsection (a), by striking out the last*
23 *sentence;*
24 *(2) in subsection (b), by striking out "shall con-*
25 *tain the matter and";*

1 *(3) by redesignating subsection (c) as subsection*
2 *(d); and*
3 *(4) by inserting after subsection (b) the following*
4 *new subsection:*
5 *"(c)(1) A complete record of the proceedings and testi-*
6 *mony shall be prepared—*
7 *"(A) in each general court-martial case in which*
8 *the sentence adjudged includes death, a dismissal, a*
9 *discharge, or (if the sentence adjudged does not include*
10 *a discharge) any other punishment which exceeds that*
11 *which may otherwise be adjudged by a special court-*
12 *martial; and*
13 *"(B) in each special court-martial case in which*
14 *the sentence adjudged includes a bad-conduct dis-*
15 *charge.*
16 *"(2) In all other court-martial cases, the record shall*
17 *contain such matters as may be prescribed by regulations of*
18 *the President.".*
19 *(d)(1) Section 865 (article 65) is amended to read as*
20 *follows:*
21 ***"§ 865. Art. 65. Disposition of records***
22 *"(a) In a case subject to appellate review under section*
23 *866 or 869(a) of this title (article 66 or 69(a)) in which the*
24 *right to such review is not waived, or an appeal is not with-*
25 *drawn, under section 861 of this title (article 61), the record*

1 *of trial and action thereon shall be transmitted to the Judge*
2 *Advocate General for appropriate action.*
3 *"(b) Except as otherwise required by this chapter, all*
4 *other records of trial and related documents shall be transmit-*
5 *ted and disposed of as the Secretary concerned may prescribe*
6 *by regulation.".*
7 *(2) The item relating to such section (article) in the*
8 *table of sections at the beginning of subchapter IX is amend-*
9 *ed to read as follows:*

"865. 65. Disposition of records.".

10 *REVIEW OF COURTS-MARTIAL AND RELATED MATTERS*
11 *SEC. 7. (a)(1) Section 864 (article 64) is amended to*
12 *read as follows:*
13 ***"§ 864. Art. 64. Review by a judge advocate***
14 *"(a) Each case in which there has been a finding of*
15 *guilty that is not reviewed under section 866 or 869(a) of*
16 *this title (article 66 or 69(a)) shall be reviewed by a judge*
17 *advocate under regulations of the Secretary concerned. A*
18 *judge advocate may not review a case under this subsection if*
19 *he has acted in the same case as an accuser, investigating*
20 *officer, member of the court, military judge, or counsel or has*
21 *otherwise acted on behalf of the prosecution or defense. The*
22 *judge advocate's review shall be in writing and shall contain*
23 *the following:*
24 *"(1) Conclusions as to whether—*

1 *"(A) the court had jurisdiction over the ac-*
2 *cused and the offense;*
3 *"(B) the charge and specification stated an*
4 *offense; and*
5 *"(C) the sentence was within the limits pre-*
6 *scribed as a matter of law.*
7 *"(2) A response to each allegation of error made*
8 *in writing by the accused.*
9 *"(3) If the case is sent for action under subsection*
10 *(b), a recommendation as to the appropriate action to*
11 *be taken and an opinion as to whether corrective action*
12 *is required as a matter of law.*
13 *"(b) The record of trial and related documents in each*
14 *case reviewed under subsection (a) shall be sent for action to*
15 *the person exercising general court-martial jurisdiction over*
16 *the accused at the time the court was convened (or to that*
17 *person's successor in command) if—*
18 *"(1) the judge advocate who reviewed the case rec-*
19 *ommends corrective action;*
20 *"(2) the sentence approved under section 860(c) of*
21 *this title (article 60(c)) extends to dismissal, a bad-con-*
22 *duct or dishonorable discharge, or confinement for more*
23 *than six months; or*
24 *"(3) such action is otherwise required by regula-*
25 *tions of the Secretary concerned.*

1 *"(c)(1) The person to whom the record of trial and relat-*
2 *ed documents are sent under subsection (b) may—*
3 *"(A) disapprove or approve the findings or sen-*
4 *tence, in whole or in part;*
5 *"(B) remit, commute, or suspend the sentence in*
6 *whole or in part;*
7 *"(C) except where the evidence was insufficient at*
8 *the trial to support the findings, order a rehearing on*
9 *the findings, on the sentence, or on both; or*
10 *"(D) dismiss the charges.*
11 *"(2) If a rehearing is ordered but the convening authori-*
12 *ty finds a rehearing impracticable, he shall dismiss the*
13 *charges.*
14 *"(3) If the opinion of the judge advocate in the judge*
15 *advocate's review under subsection (a) is that corrective*
16 *action is required as a matter of law and if the person re-*
17 *quired to take action under subsection (b) does not take*
18 *action that is at least as favorable to the accused as that*
19 *recommended by the judge advocate, the record of trial and*
20 *action thereon shall be sent to the Judge Advocate General*
21 *for review under section 869(b) of this title (article 69(b)).".*
22 *(2) The item relating to such section (article) in the*
23 *table of sections at the beginning of subchapter IX is amend-*
24 *ed to read as follows:*

"864. 64. Review by a judge advocate.".

1 *(b) Section 866(a) (article 66(a)) is amended by insert-*
2 *ing after the second sentence the following new sentence:*
3 *"Any decision of a panel may be reconsidered by the court*
4 *sitting as a whole in accordance with such rules.".*
5 *(c) Section 866(b) (article 66(b)) is amended to read as*
6 *follows:*
7 *"(b) The Judge Advocate General shall refer to a Court*
8 *of Military Review the record in each case of trial by court-*
9 *martial—*
10 *"(1) in which the sentence, as approved, extends*
11 *to death, dismissal of a commissioned officer, cadet, or*
12 *midshipman, dishonorable or bad-conduct discharge, or*
13 *confinement for one year or more; and*
14 *"(2) except in the case of a sentence extending to*
15 *death, the right to appellate review has not been waived*
16 *or an appeal has not been withdrawn under section*
17 *861 of this title (article 61).".*
18 *(d) Section 867(b)(1) (article 67(b)(1)) is amended by*
19 *striking out "affects a general or flag officer or".*
20 *(e)(1) The text of section 869 (article 69) is amended to*
21 *read as follows:*
22 *"(a) The record of trial in each general court-martial*
23 *that is not otherwise reviewed under section 866 of this title*
24 *(article 66) shall be examined in the office of the Judge Advo-*
25 *cate General if there is a finding of guilty and the accused*

1 *does not waive or withdraw his right to appellate review*
2 *under section 861 of this title (article 61). If any part of the*
3 *findings or sentence is found to be unsupported in law or if*
4 *reassessment of the sentence is appropriate, the Judge Advo-*
5 *cate General may modify or set aside the findings or sentence*
6 *or both. If the Judge Advocate General so directs, the record*
7 *shall be reviewed by a Court of Military Review under sec-*
8 *tion 866 of this title (article 66), but in that event there may*
9 *be no further review by the Court of Military Appeals except*
10 *under section 867(b)(2) of this title (article 67(b)(2)).*
11 *"(b) The findings or sentence, or both, in a court-mar-*
12 *tial case not reviewed under subsection (a) or under section*
13 *866 of this title (article 66) may be modified or set aside, in*
14 *whole or in part, by the Judge Advocate General on the*
15 *ground of newly discovered evidence, fraud on the court, lack*
16 *of jurisdiction over the accused or the offense, error prejudi-*
17 *cial to the substantial rights of the accused, or the appropri-*
18 *ateness of the sentence. If such a case is considered upon*
19 *application of the accused, the application must be filed in*
20 *the office of the Judge Advocate General by the accused on or*
21 *before the last day of the two-year period beginning on the*
22 *date the sentence is approved under section 860(c) of this title*
23 *(article 60(c)), unless the accused establishes good cause for*
24 *failure to file within that time.*

1 *"(c) If the Judge Advocate General sets aside the find-*
2 *ings or sentence, he may, except when the setting aside is*
3 *based on lack of sufficient evidence in the record to support*
4 *the findings, order a rehearing. If he sets aside the findings*
5 *and sentence and does not order a rehearing, he shall order*
6 *that the charges be dismissed. If the Judge Advocate General*
7 *orders a rehearing but the convening authority finds a re-*
8 *hearing impractical, the convening authority shall dismiss*
9 *the charges.".*

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

18 *INCLUSION OF CONTROLLED SUBSTANCES IN PUNITIVE*
19 *ARTICLES*

20 *SEC. 8. (a) Subchapter X is amended by inserting after*
21 *section 912 (article 112) the following new section (article):*
22 ***"§ 912a. Art. 112a. Wrongful use, possession, etc., of con-***
23 ***trolled substances***

24 *"(a) Any person subject to this chapter who wrongfully*
25 *uses, possesses, manufactures, distributes, imports into the*

1 *customs territory of the United States, exports from the*
2 *United States, or introduces into an installation, vessel, vehi-*
3 *cle, or aircraft used by or under the control of the armed*
4 *forces a substance described in subsection (b) shall be pun-*
5 *ished as a court martial may direct.*

6 *"(b) The substances referred to in subsection (a) are the*
7 *following:*

8 *"(1) Opium, heroin, cocaine, amphetamine, lyser-*
9 *gic acid diethylamide, methamphetamine, phencycli-*
10 *dine, barbituric acid, and marijuana and any com-*
11 *pound or derivative of any such substance.*

12 *"(2) Any substance not specified in clause (1)*
13 *that is listed on a schedule of controlled substances pre-*
14 *scribed by the President for the purposes of this article.*

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

20 *(b) The table of sections at the beginning of such sub-*
21 *chapter is amended by inserting after the item relating to*
22 *section 912 (article 112) the following new item:*

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

23 *THE CODE COMMITTEE*

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

1 *(1) by striking out "The Court of Military Ap-*
2 *peals" and all that follows through "and report" and*
3 *inserting in lieu thereof "(1) A committee consisting of*
4 *the judges of the Court of Military Appeals, the Judge*
5 *Advocates General of the Army, Navy, and Air Force,*
6 *the Chief Counsel of the Coast Guard, the Director,*
7 *Judge Advocate Division, Headquarters, United States*
8 *Marine Corps, and two members of the public appoint-*
9 *ed by the Secretary of Defense shall meet at least an-*
10 *nually. The committee shall make an annual compre-*
11 *hensive survey of the operation of this chapter. After*
12 *each such survey, the committee shall report";*
13 *(2) by adding at the end thereof the following:*
14 *"(2) Each member of the committee appointed by the*
15 *Secretary of Defense shall be a recognized authority in mili-*
16 *tary justice or criminal law. Each such member shall be ap-*
17 *pointed for a term of three years.*
18 *"(3) The Federal Advisory Committee Act (5 U.S.C.*
19 *App. I) shall not apply to the committee.".*
20 *(b)(1) The Secretary of Defense shall establish a com-*
21 *mission to study and make recommendations concerning the*
22 *following matters:*
23 *(A) Whether the sentencing authority in court-*
24 *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.

(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.

(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:

1 *(A) The experience in the civilian sector with jury*
2 *sentencing and judge-alone sentencing, with particular*
3 *reference to consistency, uniformity, sentence appropri-*
4 *ateness, efficiency in the sentencing process, and*
5 *impact on the rights of the accused.*
6 *(B) The potential impact of mandatory judge-*
7 *alone sentencing on the Armed Forces, with particular*
8 *reference to consistency, uniformity, sentence appropri-*
9 *ateness, efficiency in the sentencing process, impact on*
10 *the rights of the accused, effect on the participation of*
11 *members of the Armed Forces in the military justice*
12 *system, impact on relationships between judge advo-*
13 *cates and other members of the Armed Forces, and*
14 *impact on the perception of the military justice system*
15 *by members of the Armed Forces, the legal profession,*
16 *and the general public.*
17 *(C) The likelihood of a reduction in the number*
18 *of general court-martial cases in the event the confine-*
19 *ment jurisdiction of the special court-martial is ex-*
20 *panded; the additional protections that should be af-*
21 *forded the accused if such jurisdiction is expanded;*
22 *whether the minimum number of members prescribed*
23 *by law for a special court-martial should be increased;*
24 *and whether the appellate review process should be*
25 *modified so that a greater number of cases receive*

1 *review by the military appellate courts, in lieu of legal*
2 *reviews presently conducted in the offices of the Judge*
3 *Advocates General and elsewhere, especially if the*
4 *commission determines that the special court-martial*
5 *jurisdiction should be expanded.*
6 *(D) The effectiveness of the present systems for*
7 *maintaining the independence of military judges and*
8 *what, if any, changes are needed in these systems to*
9 *ensure maintenance of an independent military judici-*
10 *ary, including a term of tenure for such judges consist-*
11 *ent with efficient management of military judicial re-*
12 *sources.*
13 *(4) The commission shall transmit its report to the*
14 *Committees on Armed Services of the Senate and the House*
15 *of Representatives and to the committee established under*
16 *section 867(g) (article 67(g)) of title 10, United States Code,*
17 *not later than the first day of the ninth calendar month that*
18 *begins after the date of the enactment of this Act. Not later*
19 *than the first day of the third calendar month that begins*
20 *after receipt of such report, the committee established under*
21 *section 867(g) (article 67(g)) of such title shall submit such*
22 *comments on the report as it considers appropriate to the*
23 *Committees on Armed Services of the Senate and the House*
24 *of Representatives and to the Secretary of Defense, the Sec-*

1 *retaries of the military departments, and the Secretary of*
2 *Transportation.*
3 *(5) The Secretary of Defense shall ensure that the com-*
4 *mission is provided with appropriate and adequate office*
5 *space, together with such equipment, office supplies, and com-*
6 *munications facilities and services as may be necessary for*
7 *the operation of such offices, and shall provide necessary*
8 *maintenance services for such offices and the equipment and*
9 *facilities located therein.*
10 *(6) The Secretary shall ensure that the commission has*
11 *reasonable access to information relevant to the study.*
12 *SUPREME COURT REVIEW*
13 *SEC. 10. (a)(1) Chapter 81 of title 28, United States*
14 *Code, is amended by adding at the end thereof the following*
15 *new section:*
16 ***"§ 1259. Court of Military Appeals; certiorari***
17 *"Decisions of the United States Court of Military Ap-*
18 *peals may be reviewed by the Supreme Court by writ of cer-*
19 *tiorari in the following cases:*
20 *"(1) Cases reviewed by the Court of Military Ap-*
21 *peals under section 867(b)(1) of title 10.*
22 *"(2) Cases certified to the Court of Military Ap-*
23 *peals by the Judge Advocate General under section*
24 *867(b)(2) of title 10.*

1 *"(3) Cases in which the Court of Military Ap-*
2 *peals granted a petition for review under section*
3 *867(b)(3) of title 10.*
4 *"(4) Cases, other than those described in para-*
5 *graphs (1), (2), and (3) of this subsection, in which the*
6 *Court of Military Appeals granted relief.".*
7 *(2) The table of sections at the beginning of chapter 81*
8 *of such title is amended by adding at the end thereof the*
9 *following new item:*

"1259. Court of Military Appeals; certiorari.".

10 *(b) Section 2101 of title 28, United States Code, is*
11 *amended by adding at the end thereof the following new sub-*
12 *section:*
13 *"(g) The time for application for a writ of certiorari to*
14 *review a decision of the United States Court of Military Ap-*
15 *peals shall be as prescribed by rules of the Supreme Court.".*
16 *(c)(1) Section 866(e) (article 66(e)) is amended by*
17 *striking out "or the Court of Military Appeals" and inserting*
18 *in lieu thereof "the Court of Military Appeals, or the Su-*
19 *preme Court".*
20 *(2) Section 867 (article 67) is amended by adding at*
21 *the end thereof the following new subsection:*
22 *"(h)(1) Decisions of the Court of Military Appeals are*
23 *subject to review by the Supreme Court by writ of certiorari*
24 *as provided in section 1259 of title 28. The Supreme Court*
25 *may not review by a writ of certiorari under such section any*

1 *action of the Court of Military Appeals in refusing to grant a*
2 *petition for review.*
3 *"(2) The accused may petition the Supreme Court for a*
4 *writ of certiorari without prepayment of fees and costs or*
5 *security therefor and without filing the affidavit required by*
6 *section 1915(a) of title 28.".*
7 *(3)(A) Section 870(b) (article 70(b)) is amended by*
8 *adding at the end thereof the following new sentence: "Appel-*
9 *late Government counsel may represent the United States*
10 *before the Supreme Court in cases arising under this chapter*
11 *when requested to do so by the Attorney General.".*
12 *(B) Subsections (c) and (d) of such section are amended*
13 *to read as follows:*
14 *"(c) Appellate defense counsel shall represent the ac-*
15 *cused before the Court of Military Review, the Court of Mili-*
16 *tary Appeals, or the Supreme Court—*
17 *"(1) when requested by the accused;*
18 *"(2) when the United States is represented by*
19 *counsel; or*
20 *"(3) when the Judge Advocate General has sent*
21 *the case to the Court of Military Appeals.*
22 *"(d) The accused has the right to be represented before*
23 *the Court of Military Review, the Court of Military Appeals,*
24 *or the Supreme Court by civilian counsel if provided by*
25 *him.".*

1 *CORRECTION OF RECORDS; DISCHARGE REVIEW*

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

5 *"(f) With respect to records of courts-martial and relat-*
6 *ed administrative records pertaining to court-martial cases*
7 *tried or reviewed under chapter 47 of this title (or under the*
8 *Uniform Code of Military Justice (Public Law 506 of the*
9 *81st Congress)), action under subsection (a) may extend only*
10 *to—*

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

15 *"(2) action on the sentence of a court-martial for*
16 *purposes of clemency.".*

17 *(b) Section 1553 of such title is amended by adding at*
18 *the end of subsection (a) the following new sentence: "With*
19 *respect to a discharge or dismissal adjudged by a court-mar-*
20 *tial case tried or reviewed under chapter 47 of this title (or*
21 *under the Uniform Code of Military Justice (Public Law*
22 *506 of the 81st Congress)), action under this subsection may*
23 *extend only to a change in the discharge or dismissal or issu-*
24 *ance of a new discharge for purposes of clemency.".*

1 *EFFECTIVE DATE; CONFORMING AMENDMENT*

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

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

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

20 *(4) The amendments made by sections 5, 6, and 7 shall*
21 *not apply to any case in which the findings and sentence*
22 *were adjudged by a court-martial before the effective date of*
23 *such amendments. The proceedings in any such case shall be*
24 *held in the same manner and with the same effect as if such*
25 *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—

"(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

"(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.".

TECHNICAL AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE

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

1 *(B) by inserting "the Commonwealth of" before*
2 *"Puerto Rico".*
3 *(2) Subsection (b) of such section (article) is amended*
4 *by striking out "of this section".*
5 *(b)(1) The heading of section 815 (article 15) is amend-*
6 *ed to read as follows:*
7 ***"§ 815. Art. 15. Commanding officer's non-judicial punish-***
8 ***ment".***
9 *(2) Subsection (b) of such section (article) is*
10 *amended—*
11 *(A) by striking out "of this section"; and*
12 *(B) by striking out "subsection (b)(2)(A)" in*
13 *clause (2)(H)(i) and inserting in lieu thereof "clause*
14 *(A)".*
15 *(c) Section 825(c)(2) (article 25(c)(2)) is amended by*
16 *striking out "the word".*
17 *(d) Section 867(a)(3) (article 867(a)(3)) is amended by*
18 *inserting "Circuit" after "District of Columbia".*

○