

Public Law 97-81
97th Congress

An Act

To amend title 10, United States Code, to improve the military justice system.

Nov. 20, 1981

[H.R. 4792]

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

Military Justice
Amendments of
1981.

SHORT TITLE; REFERENCES TO UNIFORM CODE OF MILITARY JUSTICE

SECTION 1. (a) This Act may be cited as the "Military Justice Amendments of 1981".

10 USC 801 note.

(b) Whenever in this Act (except in sections 2(a) and 2(b)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

10 USC 801 *et seq.*

REQUIRED APPELLATE LEAVE

SEC. 2. (a) Section 701(a) of title 10, United States Code, is amended—

(1) by striking out "and" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof "; and"; and

(3) by inserting after clause (3) the following new clause:

"(4) leave required to be taken under section 876a of this title."

Post, p. 1087.

(b)(1) Chapter 40 of such title is amended by adding at the end thereof the following new sections:

"§706. Administration of leave required to be taken pending review of certain court-martial convictions

10 USC 706.

"(a) A period of leave required to be taken under section 876a of this title shall be charged against any accrued leave to the member's credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under subsection (b), the total period of leave required to be taken shall be charged as excess leave.

"(b)(1) A member who is required to take leave under section 876a of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the member is entitled to pay and allowances during the period of accrued leave required to be taken.

Infra.
Post, p. 1087.

“(2) Except as provided in paragraph (1) and in section 707 of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a of this title.

“(c)(1) A member required to take leave under section 876a of this title is not entitled to any right or benefit under section 2021 of title 38 solely because of employment during the period of such leave.

“(2) Section 974 of this title does not apply to a member required to take leave under section 876a of this title during the period of such leave.

10 USC 707.

“§707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

“(a) A member—

Ante, p. 1085.

“(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

“(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court of Military Review under section 866 of this title or by the United States Court of Military Appeals under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

“(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which his court-martial sentence was approved by the convening authority.

“(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

“(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

“(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

“(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

“(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.

“(3) If a member is entitled to be paid under this section but fails to provide sufficient information in a timely manner regarding his income when such information is requested under regulations prescribed under subsection (c), the periods of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

Extension.

“(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. Such regulations may provide for the method of determining a member's income during any period the member is deemed to have accrued pay and allowances, including a requirement that the member provide income tax returns and other documentation to verify the amount of his income.”.

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

“706. Administration of leave required to be taken pending review of certain court-martial convictions.

“707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken.”.

(c)(1) Subchapter IX is amended by adding at the end thereof the following new section (article):

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

10 USC 876a.

“Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved by the officer exercising general court-martial jurisdiction or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.”.

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

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

POST-TRIAL CONFINEMENT

Sec. 3. Section 813 (article 13) is amended—

10 USC 813.

(1) by striking out “Subject to section 857 of this title (article 57), no” and inserting in lieu thereof “No”; and

(2) by striking out “or the result of trial”.

INDIVIDUAL MILITARY COUNSEL

10 USC 832.

SEC. 4. (a) Section 832(b) (article 32(b)) is amended by striking out the second sentence and inserting in lieu thereof "The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section."

10 USC 838.

(b) Subsection (b) of section 838 (article 38(b)) is amended to read as follows:

"(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

"(2) The accused may be represented by civilian counsel if provided by him.

"(3) The accused may be represented—

"(A) by military counsel detailed under section 827 of this title (article 27); or

"(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

"(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

"(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

"(6) The accused is not entitled to be represented by more than one military counsel. However, a convening authority, in his sole discretion—

"(A) may detail additional military counsel as assistant defense counsel; and

"(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

Reasonably available.

"(7) The Secretary concerned shall, by regulation, define 'reasonably available' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committees on Armed Services of the Senate and House of Representatives."

CONSTRUCTIVE SERVICE OF COURT OF MILITARY REVIEW DECISIONS

10 USC 867.

SEC. 5. Subsection (c) of section 867 (article 67(c)) is amended to read as follows:

"(c) The accused may petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of—

"(1) the date on which the accused is notified of the decision of the Court of Military Review; or

“(2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Military Appeals shall act upon such a petition promptly in accordance with the rules of the court.”.

TIME LIMITS ON APPLICATIONS TO JUDGE ADVOCATES GENERAL

SEC. 6. Section 869 (article 69) is amended by adding at the end thereof the following new sentence: “When such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before— 10 USC 869.

“(1) October 1, 1983; or

“(2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction,

whichever is later, unless the accused establishes good cause for failure to file within that time.”.

EFFECTIVE DATES

SEC. 7. (a) The amendments made by this Act shall take effect at the end of the sixty-day period beginning on the date of the enactment of this Act. 10 USC 706 note.

(b)(1) The amendments made by section 2 shall apply to each member whose sentence by court-martial is approved on or after the effective date of such amendments under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction.

(2) The amendments made by section 3 shall apply to each person held as the result of a court-martial sentence announced on or after the effective date of such amendments.

(3) The amendment made by section 4(a) shall apply with respect to investigations under section 832 (article 32) of title 10, United States Code, that begin on or after the effective date of such amendment.

(4) The amendment made by section 4(b) shall apply to trials by courts-martial in which all charges are referred to trial on or after the effective date of such amendment.

(5) The amendment made by section 5 shall apply to any accused with respect to a Court of Military Review decision that is dated on or after the effective date of such amendment.

Approved November 20, 1981.

THE HOUSE ON SEPTEMBER 17, 1981, PASSED THE AMENDMENT TO SECTION 4(b) OF TITLE 10, U.S.C. AS FOLLOWS: "When such a case is referred to trial on or after the effective date of this amendment, the application must be filed in the Office of the Judge Advocate General by the accused before— (1) October 1, 1982; or (2) the last day of the two-year period beginning on the date the sentence is imposed by the convening authority, or in a court-martial case which requires action under section 554 of this title (55 U.S.C. 554), the date of the court-martial jurisdiction. The amendment shall apply to any accused who is referred to trial on or after the effective date of this amendment."

LEGISLATIVE HISTORY

Section 4 of the amendments made by this Act shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act. The amendments made by section 3 shall apply to each court-martial case referred to trial on or after the effective date of this amendment which is referred to trial on or after the effective date of this amendment. The amendments made by section 5 shall apply to each case in which a sentence is imposed on or after the effective date of this amendment. The amendments made by section 4 shall apply to each case in which a sentence is imposed on or after the effective date of this amendment. The amendments made by section 5 shall apply to each case in which a sentence is imposed on or after the effective date of this amendment.

LEGISLATIVE HISTORY—H.R. 4792:

HOUSE REPORT No. 97-306 (Comm. on Armed Services).
CONGRESSIONAL RECORD, Vol. 127 (1981):
Nov. 4, considered and passed House.
Nov. 5, considered and passed Senate.