

CHAPTER 48

COURTS-MARTIAL SENTENCES4801 EFFECT OF SENTENCES ON PAY AND ALLOWANCES480101. Forfeitures

A. A sentence to partial forfeiture of pay deprives a member of the amount of pay stated in the sentence. The sentence applies for the number of months or days expressly stated.

B. Forfeitures apply to pay (and allowances if total forfeitures of pay and allowances are specifically adjudged) becoming due on and after the date the sentence is approved by the convening authority, unless the convening authority suspends or remits the forfeiture.

480102. Fines. A fine is in the nature of a judgment. It makes a member pecuniarily liable to the United States for the amounts specified in the sentence. Fines are not self-executing. They are debts to the government until:

A. Paid in cash by the member,

B. Collected by deduction from the member's current pay, or

C. Collected by deduction on settlement of a member's pay account at discharge.

480103. Forfeiture of Allowances. Allowances are forfeited only when a sentence by a general court-martial includes forfeiture of all pay and allowances.

480104. Application of Forfeitures. This means that forfeitures are withheld (as distinguished from collected) on and after the date a sentence is approved by the convening authority. It applies when a court-martial sentence, as approved by the convening authority, includes forfeiture and confinement, not suspended, or deferred, and the sentence is such that further appellate review is required before the sentence can be ordered executed.

480105. Execution of Forfeitures. This means actual collection of forfeitures when a sentence is ordered executed. The order of execution authorizes the collection of any monies withheld during the period specified in the convening authority's initial order to apply the forfeitures, and any monies remaining to be collected from current pay during the remainder of the period of the approved sentence. If any amount ordered forfeited is not actually withheld or collected during the period specified by the approved sentence, such amount may be involuntarily collected as an erroneous payment as provided in Table 50-1, rule 3, at a rate not to exceed the maximum authorized by Table 50-6, rule 2. However, the collection rate will not be less than

that fixed by the approved sentence.

4802 REQUIREMENT FOR REDUCTION IN GRADE UNDER CERTAIN COURTS-MARTIAL SENTENCES

Unless otherwise provided in regulations of the Military Service concerned, a court-martial sentence, as approved by the convening authority which includes dishonorable or bad conduct discharge, confinement, or hard labor without confinement, by operation of law requires reduction of an enlisted member to pay grade E-1 effective on the date of that approval. If the sentence of a member who is thus reduced in pay grade is set aside or disapproved, or, as finally approved, does not include any of the above punishment, all rights and privileges denied the member because of the reduction are restored. The member is entitled to the pay and allowances to which member would have been entitled, for the period the reduction was in effect, had the grade reduction not been applied. The Military Services apply reduction in this instance as follows:

480201. Army. An accused may be retained in the grade held at the time of the sentence or in any intermediate grade if the convening or higher authority, taking initial action on the case, suspends all elements of the sentence which would otherwise require reduction to pay grade E-1 by operation of law and provides for retaining the member's present or intermediate grade as set forth in AR 600-200 (reference (v)). When the action set forth in AR 600-200 (reference (v)) is not taken, the member is reduced to pay grade E-1 effective on the date the sentence is approved by the convening authority.

480202. Navy and Marine Corps. Exercising sole discretion, the convening authority or supervisory authority may retain the accused in the pay grade held at the time of sentence or an intermediate pay grade and suspend the automatic reduction to pay grade E-1 which would otherwise be effected. The automatic reduction may be suspended without regard to whether any part of the approved sentence was suspended. Additionally, the convening authority may direct that the accused serve in pay grade E-1 while in confinement but be returned to the pay grade held at the time of sentence or an intermediate pay grade upon release from confinement. If, however, the adjudged sentence included a reduction in pay grade, the reduction in pay grade should be suspended for the same period as the automatic reduction is suspended. Failure of the convening authority to address automatic reduction will result in the automatic reduction to pay grade E-1 on the date of the convening authority's action.

480203. Air Force. Effective with courts-martial sentences adjudged on and after 1 May 1975, involving enlisted members, an automatic reduction to pay grade E-1 is no longer prescribed by the Air Force. Any reduction in grade must be expressly stated in the court-martial sentence. If the sentence includes an approved reduction, as well as punitive discharge, confinement at hard labor, or hard labor without confinement, the member will be reduced under Article 58a, Uniform Code of Military Justice (UCMJ) (reference (i)), at the time of action by the convening authority. The reduction, if approved, will not be delayed until completion of appellate review under Article 71(c), UCMJ (reference (i)).

★480204. Effective Date of Automatic Reduction in Grade. If an enlisted member is reduced by operation of law to pay grade E-1, the effective date of the reduction is the date on which the sentence is approved by the convening authority.

★480205. Reduction in Grade as a Result of Courts-Martial Sentence. Effective for court-martial sentences adjudged after 31 March 1996, a reduction in grade that is imposed as part of a court-martial sentence takes effect on the date the sentence is approved by the convening authority, or on the 14th day after the sentence is adjudged, whichever is earlier.

4803 FORFEITURES

480301. Pay Subject to Forfeiture. Forfeitures, other than total forfeitures apply to:

- A. Basic pay, based on the member's years of service, and
- B. Career sea pay or foreign duty pay, provided such pay continues to accrue after the effective date of the sentence.
- C. An allotment made voluntarily.

480302. Pay Not Subject to Forfeiture. Forfeitures, other than total forfeitures, do not apply to special (other than sea or foreign duty pay) or incentive pay.

480303. Taxes. A forfeiture is a loss of entitlement to the pay involved. consequently, forfeitures are not taxed. Compute the amount of pay to be forfeited before withholding for federal and state income and FICA taxes. Compute taxes on the gross pay remaining after deductions of the forfeiture.

480304. Reduction in Grade. If a member's sentence includes or requires a reduction in grade, apply forfeitures to the pay of the grade to which reduced.

480305. Concurrent Forfeitures. When two or more sentences require forfeitures for a concurrent period, the amount stated in each sentence is forfeited only for the specified period. If each forfeiture results from a court-martial under which the maximum forfeiture which could be imposed is two-thirds of the pay subject to forfeiture, collect only two-thirds of the pay subject to forfeiture for the concurrent period. Following the concurrent period, pay is forfeited under the remaining sentence at the rate specified in the sentence for the time remaining in that sentence.

4804 EXECUTION OF COURTS-MARTIAL SENTENCES APPELLATE REVIEW REQUIREMENTS

See Table 48-1.

★4805 EFFECTIVE DATES OF FINES AND FORFEITURES

★480501. Fines. Begin collection of fines on the date the convening authority orders execution of the sentence.

★480502. Forfeitures

A. For courts-martial sentences adjudged before 1 April 1996, begin forfeiture of pay or allowances on the date the convening authority approves that part of the sentence establishing the forfeiture.

B. For courts-martial sentences adjudged after 31 March 1996, begin forfeiture of pay or allowances on the date the convening authority approves that part of the sentence establishing the forfeiture, or on the 14th day after the date the sentence was adjudged, whichever is earlier. However, the convening authority may defer the start of the forfeiture until the date the convening authority approves the sentence. The convening authority may revoke deferment at any time.

C. Other deferrals. A convening authority may defer the execution of a forfeiture until a prior forfeiture is executed.

4806 LOSS OF PAY AND ALLOWANCES WHEN CONFINED UNDER SENTENCE TO DISHONORABLE DISCHARGE, ARMY AND AIR FORCE

Pay and allowances of an enlisted member of the Army or Air Force who is in confinement under sentence of a dishonorable discharge, the execution of which has been suspended, accrue only until the affirmance of the discharge upon completion of the required appellate review under Article 71 of the UCMJ (reference (i)).

★480601. Forfeiture of Pay and Allowances During Certain Court Martial Confinements.

A. General Court Martial. Effective with general courts martial sentences adjudged after 31 March 1996, a member who is sentenced to

1. Death;
2. Confinement for more than six months; or
3. Confinement of any length and either a dishonorable discharge, a bad-conduct discharge, or a dismissal forfeits all pay and allowances while in confinement or in a parole status.

B. Special Court Martial. If the sentence is adjudged by special court martial, forfeitures under the same conditions apply as in subparagraph 480601.A, above, but are limited

to two-thirds of all pay and allowances.

C. Payments to Dependents. The convening authority or a person acting under 10 U.S.C. 860 may waive any or all of the forfeitures automatically imposed in this paragraph for a period not to exceed 6 months in the case of a member who has dependents. In the event of such a waiver, and when directed by the person acting under 10 U.S.C. 860, pay the waived portion of the forfeiture to the dependents of the member. Payments made to dependents are considered normal military pay and allowances otherwise due the member, and are treated as payments made to the member for tax withholding and reporting purposes.

D. Effect of Disapproval, Set aside, or Reduction of Punishment. If the sentence of a member who forfeits pay and allowances pursuant to this paragraph is set aside or disapproved or, as finally approved, does not provide for a punishment listed in subparagraph 480601.A, above, pay the member the pay and allowances that the member would have been paid except for the forfeiture, for the period during which the forfeiture was in effect. The payment to the member should be reduced by the amount of any payments made to the member's dependents under subparagraph 480601.C, above.

4807 COLLECTION

480701. Forfeitures. Since courts-martial forfeitures constitute a loss of entitlement of the pay concerned, the forfeitures take precedence over all debts.

480702. Fines. Fines constitute an indebtedness to the United States. Collect fines as follows:

A. Current Pay. Fines may be collected involuntarily from the current pay of all members. They are collected after all other prior indebtedness for the period involved has been collected. If prior deductions reduce the member's pay by two-thirds of gross pay for any month, no pay accrues against which fines may be applied. In such case, defer collection of fines until pay accrues against which they may be applied.

B. Final Pay. Fines may be collected involuntarily from the final pay of all members. They are collected after all other indebtedness. Collections will not reduce pay received by enlisted members of the Army or Air Force to less than one-third of gross pay. Separation travel allowances and donations on discharge will not be used to liquidate an indebtedness for enlisted members. Otherwise, all final pay and amounts due the member at separation may be collected involuntarily (see Table 50-6, rule 2.)

480703. Rate of Collection. Charge forfeitures of pay, as approved and ordered executed, against a member's pay at the rate required by the sentence until the sentence is fully satisfied. Forfeitures of pay are considered as collected from day to day as pay accrues. Prorate the monthly rate of forfeiture on a daily basis for a portion of a month. The amount of forfeiture or fine is governed by the language of the sentence. For example, a sentence to forfeit \$20 per month for 6 months means a forfeiture of \$120 to be collected at \$20 per month. Pay cannot be

forfeited by implication. For example, a sentence reading "to be confined for 2 months and to forfeit \$60 of his or her pay for a like period," does not mean a forfeiture of \$60 per month for two months, or a total of \$120, but means a forfeiture of only \$60.

480704. Non-Pay Status. During periods when a member is in a non-pay status, pay does not accrue against which forfeitures or fines can apply. Do not count such periods in computing the time during which pay is forfeited for a specific period.

480705. Restoration to Duty. A member restored to duty following a non-pay status is again entitled to pay against which forfeitures or fines may apply.

480706. Service Beyond ETS for Medical Care. The pay and allowances of an enlisted member retained beyond ETS for medical care or hospitalization are subject to forfeitures and fines.

480707. Non-collection Due to Administrative Error. Collect courts-martial forfeitures not collected due to administrative error when the error is discovered. Collection may be made for the court-martial forfeiture or for erroneous payments made during the period covered by the sentence. Indebtedness of this type cannot be remitted under statutes authorizing remission of indebtedness.

480708. Pay Due or Accrued. Pay of a member subject to forfeiture by sentence of court-martial is pay which is earned on and after the effective date of the forfeiture. See section 4805, above.

480709. Forfeiture Based on Reserve Status in Certain Circumstances. All punishments (as the result of any offense committed on or after 12 March 1987) remaining unserved (1) at the time a member of a Reserve Component is released from active duty or (2) at the end of a period of active duty training or the end of any normal period of inactive duty training may be carried over to subsequent periods of inactive duty training or active duty. A forfeiture of pay may be collected from active duty and inactive duty training pay during subsequent periods of duty. (See section 4813, below.)

4808 REMISSION, SUSPENSION, AND CANCELLATION OF FORFEITURES

480801. Death or Separation

A. The death or discharge of a member under a suspended sentence operates as a complete remission of any unexecuted or unremitted part of a sentence.

B. Discharge, release from active duty (except under paragraph 480709, above), or death of a member under an unsuspended sentence to forfeiture cancels any uncollected portion of the forfeiture which would extend beyond the date of discharge, release, or death.

480802. End of Term of Service, Unauthorized Absence, or Desertion. The end of term of service of a member in military confinement, the unauthorized absence, or desertion of a member, stops collections of uncollected forfeitures since no pay accrues against which forfeitures can operate. If an unauthorized absentee or deserter is restored to pay status, resume otherwise proper collections.

480803. Extension of Enlistment. When enlisted member begins to serve on a voluntary extension of enlistment, cancel any uncollected forfeitures the collection period of which would extend beyond the normal expiration of term of service. Involuntary extensions of enlistments do not interrupt collection of forfeitures.

480804. Restoration to Duty. A member under sentence to dishonorable or bad conduct discharge, total forfeiture, and confinement, released from confinement and restored to duty, is entitled to pay and allowances from the date restored to duty, and the forfeiture becomes inoperative thereafter. This applies even though no other action may have been taken to suspend, remit, or mitigate the sentence to total forfeiture. A restoration to duty to serve out an incomplete enlistment, from which an enlisted member has received a sentence of dishonorable or bad conduct discharge, revives partially unsatisfied forfeitures.

480805. Effective Date. Except when a later date is specified, an order remitting, mitigating, or suspending the unexecuted portion of a sentence is effective from and includes the date of the order. Such an order relieves the member of the unexecuted portion of the forfeiture or fine on and after the effective date.

480806. Results of Remission or Suspension. When an unexecuted portion of a sentence to forfeiture or fine is remitted or suspended, the member is no longer subject to the unexecuted forfeiture or fine. If forfeitures have been applied (as distinguished from collected), the member is relieved of such forfeitures.

480807. Vacation of Suspension. When a suspension of a forfeiture or fine is vacated, the uncollected forfeiture or fine is revived and proper for collection.

4809 SENTENCES DISAPPROVED OR SET ASIDE

480901. When New Trial or Rehearing Is Not Ordered. When a court-martial sentence is set aside or disapproved and a new trial or rehearing is not ordered, all rights, privileges, and property affected by the executed part of the sentence are restored to the member. Such restoration includes any executed forfeiture and any pay and allowances lost as a result of an executed reduction in grade.

480902. New Trial or Rehearing Ordered

A. When an executed court-martial sentence which includes a forfeiture is set aside or disapproved, and a new trial or rehearing is ordered that results in an approved sentence to forfeiture, credit the member with the amount of any forfeiture effected under the first

sentence. When an unexecuted court-martial sentence which includes a forfeiture is set aside or disapproved and a rehearing is ordered, the member is entitled to full pay and allowances (subject to other proper deductions) for the period from the convening authority's action on the original sentence until the convening authority's action on the subsequent sentence. Entitlement to pay and allowances thereafter depends on the terms of the new sentence.

B. When a previously executed dishonorable or bad conduct discharge is not imposed by a new trial, the member is entitled to the pay and allowances which the member would have received had the dishonorable or bad conduct discharge not been executed. When a previously executed dismissal of an officer is not imposed by a new trial, an administrative discharge is substituted. The President may reappoint the officer to the grade and rank the officer would have attained if the officer had not been dismissed. The total time between the dismissal and reappointment is considered as actual service for all purposes, including pay and allowances.

4810 REIMBURSEMENT OF PAY WITHHELD UNDER ILLEGAL SENTENCES

A member is entitled to reimbursement for pay withheld under an illegal sentence of a court-martial.

4811 PAY AND ALLOWANCES WHILE ON PAROLE

A member released on parole from a disciplinary barracks is considered to be in an authorized leave status and is entitled to pay and allowances to the extent the member has unused accrued leave to the member's credit, less any fines and forfeitures still remaining in effect. Once the member's accrued leave has been used, the member is considered to be in an excess leave/leave without pay status and is not entitled to pay and allowances during this period unless, upon appellate review, the conviction is completely overturned or set aside. However, if the member is subject to a new trial or rehearing, apply the provisions of paragraph 480902, above.

4812 DISPOSITION OF COURTS-MARTIAL FORFEITURES AND FINES

Transfer courts-martial forfeitures and fines of Armed Forces (regular and Reserve) enlisted members, warrant officers, and limited duty officers to the Armed Forces Retirement Home Trust Fund. Transfer only those amounts that are in excess of any government indebtedness. For purposes of this paragraph only, the term "government indebtedness" refers to an amount due from the member for reimbursement to the government. For example, the repayment of an advance of pay is a reimbursement but, an amount due to the Internal Revenue Service, while considered a debt to the government, is not a "reimbursement" or "government indebtedness," for purposes of this paragraph.

481201. Separation From Service Not Involved When enlisted members, warrant officers or limited duty officers have been sentenced by a court-martial to forfeit all or part of their pay, no part of the forfeiture is creditable to Armed Forces Retirement Home Trust Fund until amounts equal to all outstanding indebtedness to the government have been withheld. Transfer only those amounts forfeited that are in excess of any government indebtedness or

amounts owed any individuals. In addition, for the purposes of this paragraph, the term "amounts owed any individuals" refers to amounts owed from a member's pay by direction of a commanding officer pursuant to Article 139 of the UCMJ (reference (i)).

481202. Members Who Are Being Separated From Service. A court-martial forfeiture of a limited duty officer, warrant officer, or enlisted member is not credited to the Armed Forces Retirement Home Trust Fund when the member has unsatisfied indebtedness at date of separation, except as shown in paragraph 481203, below. It remains in the military personnel appropriation. If the unsatisfied debt at separation is less than the forfeiture, credit the difference between the aggregate unsatisfied debt and the forfeiture to the Armed Forces Retirement Home Trust Fund. (For example: If the uncollected indebtedness is \$500 and forfeiture is \$600, credit the Armed Forces Retirement Home Trust Fund the difference of \$100 between the unsatisfied indebtedness and the forfeiture.) Transfer amounts collected afterward to counterbalance the indebtedness not to exceed the aggregate forfeiture, less amounts previously credited to the Armed Forces Retirement Home Trust Fund.

481203. Indebtedness After Forfeiture Becomes Effective. If debts occur to enlisted members, warrant officers or limited duty officers after a court-martial has been executed and before credit of the forfeiture has been made to the Armed Forces Retirement Home Trust Fund, such debts will not affect the disposition of the forfeiture. Credit the forfeiture to the Armed Forces Retirement Home Trust Fund as if the indebtedness did not exist.

481204. Remission of Indebtedness. If a court-martial forfeiture of enlisted members, warrant officers or limited duty officers is not credited to the Armed Forces Retirement Home Trust Fund due to outstanding debts, and the unliquidated portion of the debts are thereafter remitted or cancelled, do not credit the forfeiture that equals the amount of indebtedness remitted or cancelled to the Armed Forces Retirement Home Trust Fund. That amount remains in the military personnel appropriation.

481205. Commissioned Officers. Credit courts-martial forfeitures and fines of commissioned officers (except limited duty officers and warrant officers) to the appropriation to which the member's pay is properly chargeable.

4813 FORFEITURE SENTENCES CARRIED OVER TO SUBSEQUENT RESERVE COMPONENT DUTY

481301. In the case of a forfeiture sentence carried forward according to paragraph 480709, above, convert the stated amount of forfeiture to a percentage using the monthly rate of basic pay in Table 2-5 through 2-8 for the member's grade and length of service on the date the forfeiture sentence is approved. Apply that percentage to the pay for every period of duty the member actually performs during the stated period of the forfeiture sentence.

481302. Example

A. A member, E-4 over 2, receives a sentence which includes a forfeiture

(either nonjudicial punishment or court-martial sentence) of \$200 a month for two months (\$400).

B. The member's monthly rate of pay is \$912.60.

C. Convert the original forfeiture to a percentage, $(200/912.60) = 21.92\%$.

D. For each period of duty performed during the stated period of the sentence, collect 21.92% of the member's pay from active duty and inactive duty training pay.

481303. The forfeiture sentence is satisfied by collection from however few periods of duty the member performs during the stated period of forfeiture. With regard to collection, apply the following:

A. If a member performs the duty above without forfeiture collection, the amount not collected on the basis of paragraph 481203, above, becomes an amount due the United States.

B. Otherwise, collect forfeiture at the percentage rate computed according to paragraph 481301, above, from all periods of duty during the stated period of forfeiture.

481304. Note that the forfeiture sentence is satisfied by collection from duty performed during the stated period of forfeiture only. If a member performs no duty during the stated period of the forfeiture sentence, no further collection action is necessary.

EXECUTION OF COURTS-MARTIAL SENTENCES, APPELLATE REVIEW REQUIREMENTS			
R U L E	A	B	C
	When a court-martial sentence	the sentence may	who
1	involves a general or flag officer or includes the death penalty	not be executed until reviewed and approved by the President	will approve the sentence or any part or commuted form of the sentence, as the President sees fit. The President may suspend execution of all or any part of the sentence which the President approves except a death sentence.
2	involves dismissal of a commissioned officer (other than a general or flag officer) or a cadet or midshipman	not be executed until reviewed by the Secretary of the Military Department concerned or by an Under Secretary or Assistant Secretary designated by the cognizant Secretary.	will approve the sentence or any part or commuted form of the sentence, as the Secretary or designee sees fit. The Secretary or designee may suspend execution of any part of a sentence which the Secretary or designee approves.
3	includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for 1 year or longer	not be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals	will affirm the sentence, or part of the sentence found to be correct in law and fact.
4	does not include any of the conditions stated in rules 1, 2, and above	be ordered executed by the convening authority	may suspend or defer the execution of any sentence.
5	includes a fine or forfeiture of pay	not be executed with respect to such fine or forfeiture until approved by the convening authority	orders the fine or forfeiture to be executed.

Table 48-1. Execution of Courts-Martial Sentences, Appellate Review Requirements