CONGRESSIONAL POLICY MEMORANDUM / TITLE V

Unanimous Courts-Martial Verdicts

Article 52 of the Uniform Code of Military Justice: legal analysis, victim safeguards, implementation costs, and questions for congressional research.

Proposed Act: Military Accountability and Service Member Protection Act
Prepared for: Preliminary congressional, academic, and military justice review
Status: Unintroduced policy discussion; not enacted law

“The question is not whether accountability matters. It is which voting rule best protects the reliability, legitimacy, and fairness of military criminal adjudication.”

Question presented

Should Congress amend Article 52, 10 U.S.C. § 852, to require a unanimous vote of court-martial members for findings of guilty in contested general and special courts-martial, while preserving lawful judge-alone proceedings, guilty pleas, victim rights, and administratively workable trial procedures?

Summary

Current Article 52 generally permits a guilty finding by three-fourths of court-martial members present. A statutory unanimity requirement would be a policy change, not a remedy already compelled by controlling military appellate precedent. The proposal warrants a comparative legal analysis, careful consideration of victim and witness impacts, credible estimates of retrials and delays, and a phased implementation plan. The 2024 Joint Service Committee (JSC) report recommended against adoption, a material counterargument Congress should assess directly [1–4].

01 | EXISTING LAW AND CONSTITUTIONAL CONTEXT

Current Legal Framework

Article 52: the existing voting rule

Under 10 U.S.C. § 852(a), a contested conviction by court-martial members generally requires the concurrence of at least three-fourths of members present. The statute separately recognizes guilty pleas and trial by military judge alone. A death sentence requires unanimous guilt on a capital offense and unanimous agreement on death; noncapital member sentencing generally follows a three-fourths threshold. Any amendment must distinguish findings from sentencing and specify how it affects each [1].

Civilian unanimity and military distinctions

In Ramos v. Louisiana (2020), the Supreme Court held that the Sixth Amendment jury-trial guarantee requires unanimous guilty verdicts in state criminal jury trials for serious offenses. But the Court of Appeals for the Armed Forces held in United States v. Anderson, 83 M.J. 291 (C.A.A.F. 2023), that courts-martial defendants do not have a constitutional right to unanimous verdicts under the theories presented. Accordingly, the civilian rule should not be described as automatically governing courts-martial [2–3].

Legislative design choices

- Scope: all contested general and special courts-martial with members, or a narrower category of offenses?
- Finding by finding: unanimity for every specification and lesser-included offense, with clear instructions on partial findings.
- Excluded pathways: preserve voluntary guilty pleas and authorized judge-alone adjudication, subject to existing procedural safeguards.
- Sentencing: decide separately whether noncapital sentencing votes remain unchanged; avoid inadvertently altering capital protections.
- Effective date: prospective application to defined cases, with express transition rules for charges, referral, and trial stages.

02 | POLICY OPTIONS

Competing Considerations

Potential rationales for unanimity

- Deliberative legitimacy: requiring every panel member to agree may encourage closer examination of disputed evidence and reduce the chance of conviction despite substantial internal disagreement.
- Consistency of public expectations: closer resemblance to civilian jury practice may affect perceptions of fairness, although panel selection and military jurisdiction remain distinct.
- Uniform guilt threshold: a clear single rule for contested member findings may simplify the statement of the standard, while requiring new deadlock procedures.

Material concerns and counterarguments

- Hung panels and retrials: unanimity could increase unresolved findings, rehearings, witness demands, and the burden on victims and accused persons; magnitude requires evidence, not assumption.
- Operational constraints: deployment, reassignment, witness availability, panel convening, and case-processing capacity may affect feasibility.
- Military-system safeguards: proponents of current law cite secret voting, supermajority thresholds, appellate review, and military discipline considerations.
- Victim experience: unresolved trials may prolong uncertainty and increase the number of times a victim or witness must testify.

Existing government assessment

The Joint Service Committee’s November 22, 2024 report examined adoption of unanimous verdicts and recommended against imposing the requirement at that time. It concluded that attendant costs outweighed the perceived benefits and described a substantial implementation period involving revisions to the Manual for Courts-Martial, benchbook, and judicial training. This report is an essential starting point for, not the end of, congressional analysis [4].

Analytical principle: neither fairness gains nor adverse effects should be asserted as proven without an appropriate comparative method and transparent assumptions.

03 | VICTIM AND WITNESS PROTECTION

Safeguards Under a Unanimity Rule

Article 6b establishes rights for victims of offenses under the UCMJ, including reasonable protection, notice, fairness, respect for dignity and privacy, and proceedings free from unreasonable delay. Any Article 52 change should preserve and operationalize those rights, without diluting the presumption of innocence or the prosecution's burden of proof [5].

Required procedural design questions

- Deadlock instructions: specify permissible judicial instructions, recesses, continued deliberation, and the point at which a mistrial may be declared, without coercing a dissenting member.
- Victim notification: establish prompt, trauma-informed notice of unresolved findings, mistrial, dismissal, retrial decisions, and scheduling changes, consistent with Article 6b.
- Continuity of counsel: examine capacity for Special Victims' Counsel / Victims' Legal Counsel and defense counsel during retrials or extended proceedings.
- Repeat testimony: evaluate lawful alternatives to unnecessary duplicative testimony while respecting confrontation and other defense rights.
- Evidence preservation: plan for preservation of recordings, digital evidence, testimony, and witness availability in cases requiring retrial.
- Timely review: consider reporting deadlines and oversight for delayed or repeated proceedings without dictating outcomes.
- Privacy and safety: maintain protective measures and access restrictions consistent with applicable military evidentiary rules.

No trade of one right for another

A unanimity policy should not be presented as inherently pro-victim or anti-victim. The legal system must protect accused service members against wrongful conviction while also protecting victims and witnesses from avoidable delay, repeated trauma, intimidation, and loss of access to counsel. The actual effects of any voting change should be studied.

04 | ADMINISTRATION AND COST

Implementation and Fiscal Assessment

Cost centers requiring estimates

- Rules and training: presidential and JSC rulemaking, Manual for Courts-Martial and benchbook revisions, judicial and counsel training, updated panel instructions.
- Case volume: projected deadlocks, mistrials, re-referrals, rehearings, and appellate disputes, separated by offense category and service.
- Personnel: additional judicial time, prosecutors, defense counsel, victim counsel, court reporters, paralegals, panel member duty days, and travel.
- Witness and victim support: transportation, accommodations, safety planning, continuity of services, and costs associated with repeat appearances.
- Readiness: lost duty time and scheduling effects, reported separately from direct budget outlays.
- Information systems: docket tracking, anonymous aggregate reporting, secure data collection, and quality assurance.

Scenario framework—not a budget estimate

Congress should request low, central, and high scenarios using observed baseline case volumes, panel sizes, nonunanimous vote distributions where lawfully available, estimated retrial rates, and unit costs. A transparent model would calculate incremental costs relative to the current Article 52 baseline. No credible total-dollar cost can be supplied here without those inputs.

Implementation timetable

The 2024 JSC report suggested approximately two years of preparation from enactment for deliberate implementation, with rule and training changes taking significant time [4]. Congress should obtain an updated schedule rather than adopt a stale date. A possible phased framework is: (1) statutory enactment and interservice planning; (2) rulemaking, benchbook revisions, training and data systems; (3) prospective effective date; (4) postimplementation evaluation at 12, 24, and 36 months.

05 | RESEARCH DESIGN

Questions Congress Should Commission

RQ-01 Constitutional and statutory design

Which Article 52 amendments are needed to implement unanimity without unintentionally altering pleas, judge-alone proceedings, capital cases, or sentencing rules?

RQ-02 Empirical baseline

How often do current courts-martial produce guilty findings without unanimity, to the extent reliable, lawfully accessible data exist?

RQ-03 Case outcomes

How would alternative unanimity models affect convictions, acquittals, unresolved findings, retrials, and time to disposition?

RQ-04 Victim safeguards

What additional notice, counsel, evidence preservation, and support would be needed for retrials and prolonged proceedings?

RQ-05 Panel behavior

How do panel size, rank composition, instructions, secrecy of voting, and selection procedures affect deliberation and confidence?

RQ-06 Costs and readiness

What incremental personnel, training, travel, docket, and operational costs follow from plausible scenarios?

RQ-07 Comparative safeguards

Which civilian jury procedures are transferable to military practice, and which depend on materially different institutions?

RQ-08 Equity and fairness

Would the change affect outcomes differently by offense, service, component, demographic subgroup, or represented party, subject to privacy and sample-size limits?

RQ-09 Alternatives

Would enhanced judicial instructions, improved panel selection, reporting, or appellate review achieve similar goals with different costs?

RQ-10 Evaluation

Which indicators, oversight bodies, and reporting intervals would allow Congress to revise the policy if harms or benefits emerge?

06 | LEGISLATIVE RESEARCH PLAN

Proposed Congressional Work Plan

Stage A — Legal mapping and evidence inventory

Commission a current-law matrix for Article 52, Article 6b, Rules for Courts-Martial, the 2024 JSC report, Anderson, and Ramos. Separate binding authority from policy arguments. Identify the data that are not currently available and the lawful means of obtaining them.

Stage B — Structured consultation

Seek views from military trial and appellate judges, prosecution and defense practitioners, victims' counsel, service representatives, military justice scholars, and empirical researchers. Use a common questionnaire and publish methodological limitations. Institutional consultation does not imply endorsement.

Stage C — Options and cost model

Compare retention of the three-fourths rule, unanimity for all contested member findings, and any narrowly defined alternatives. Model legal safeguards, case throughput, retrial rates, victims' needs, training, and appropriations for each option.

Stage D — Congressional deliverables

- A section-by-section Article 52 legislative options memorandum with proposed effective-date language.
- A victim-and-witness safeguards annex aligned with Article 6b.
- A cost and capacity assessment with disclosed inputs and uncertainty ranges.
- A constitutional and military-operational issues memorandum identifying unresolved questions.
- A proposed postimplementation evaluation protocol and standardized reporting measures.

Decision framework

Congress should evaluate documented problem, legal necessity, expected effectiveness, procedural protections, cost and feasibility, and measurable outcomes. The project's position remains a proposal for scrutiny; no research result or institutional endorsement is presumed.

07 | SOURCE NOTES AND STATUS

Authorities and Research Sources

[1] 10 U.S.C. § 852 (Article 52), current statutory text
https://uscode.house.gov/us/usc/119-136/t10/s852/

[2] Ramos v. Louisiana, 590 U.S. 83 (2020)
https://www.law.cornell.edu/supremecourt/text/18-5924

[3] United States v. Anderson, 83 M.J. 291 (C.A.A.F. 2023)
https://www.armfor.uscourts.gov/opinions/2022OctTerm/220193.pdf

[4] Joint Service Committee, Report on Adoption of Unanimous Verdicts (Nov. 22, 2024)
https://www.nimj.org/uploads/1/3/5/5/135587129/25-f-2243_grant_in_full.pdf

[5] 10 U.S.C. § 806b (Article 6b), rights of victims
https://uscode.house.gov/us/usc/119-124/t10/s806b/

[6] DAC-IPAD, Enforcement of Victims' Rights, institutional analysis
https://dacipad.whs.mil/images/Docs/Reports/DAC%20IPAD_Enforcement%20of%20Victims%20Rights_FINAL.pdf

Status and limitations

This memorandum is an independent legislative policy discussion prepared for the Formation Accountability Project. It is not an official congressional or Department of Defense position, a legal opinion for any individual case, or a completed cost estimate. The 2024 JSC report is identified as a major adverse policy assessment; its factual assumptions and any subsequent developments should be reviewed before legislative drafting. Proposed statutory language must be vetted by qualified military justice counsel.

MILITARY ACCOUNTABILITY AND SERVICE MEMBER PROTECTION ACT

Title V research memorandum | Proposed Article 52 voting reform | November 2026