

113TH CONGRESS
1ST SESSION

H. R. 3360

To reform Article 32 of the Uniform Code of Military Justice to specify the burden of proof applicable at the investigative hearing, the required qualifications for the investigating officer, the permitted scope of the investigation to assist the convening authority, and the protection of witnesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2013

Mr. TURNER introduced the following bill; which was referred to the
Committee on Armed Services

A BILL

To reform Article 32 of the Uniform Code of Military Justice to specify the burden of proof applicable at the investigative hearing, the required qualifications for the investigating officer, the permitted scope of the investigation to assist the convening authority, and the protection of witnesses, 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 **SECTION 1. PRE-TRIAL INVESTIGATION OF CHARGES AND**
2 **SPECIFICATIONS UNDER UNIFORM CODE OF**
3 **MILITARY JUSTICE.**

4 (a) **REQUIRED INVESTIGATION; INVESTIGATING OF-**
5 **FICER.**—Subsection (a) of section 832 of title 10, United
6 States Code (article 32 of the Uniform Code of Military
7 Justice), is amended to read as follows:

8 “(a)(1) No charge or specification may be referred
9 to a general court-martial for trial until an impartial in-
10 vestigation of the matters set forth therein has been made.
11 The investigation shall be limited to an inquiry to deter-
12 mine whether or not there is probable cause to believe that
13 the accused committed an offense as set forth in the
14 charges, consideration of the form of charges, and a rec-
15 ommendation as to the disposition which should be made
16 of the case in the interest of justice and discipline. The
17 purpose of this investigation shall not be to serve as dis-
18 covery tool for the accused.

19 “(2) An experienced judge advocate certified under
20 section 827(b) of this title (article 27(b)) shall be detailed
21 to conduct the investigation under paragraph (1), except
22 in exceptional cases in which the interests of justice die-
23 tate the detailing of an investigating officer who is not
24 a judge advocate. In such exceptional cases, an experi-
25 enced judge advocate certified under section 827(b) of this

1 title (article 27(b)) shall be detailed to serve as a legal
2 advisor to the investigating officer.”.

3 (b) LIMITATIONS ON CROSS-EXAMINATION OF WIT-
4 NESSES AND PRESENTATION OF EVIDENCE BY THE AC-
5 CUSED.—Subsection (b) of section 832 of title 10, United
6 States Code (article 32 of the Uniform Code of Military
7 Justice) is amended—

8 (1) by inserting “(1)” after “(b)”;

9 (2) by striking the third sentence; and

10 (3) by adding at the end the following new
11 paragraphs:

12 “(2) Prior to the investigation, the accused shall be
13 provided the following:

14 “(A) Any sworn or signed statement relating to
15 an offense charged that is in the possession of the
16 Government.

17 “(B) An opportunity to inspect any books, pa-
18 pers, documents, photographs, tangible objects,
19 buildings, or places, or copies of portions thereof,
20 that are in the possession, custody, or control of
21 military authorities and are intended to be used by
22 the prosecution as evidence at the hearing or were
23 obtained from or belonged to the accused.

24 “(C) Any scientific tests or experiments, or cop-
25 ies thereof, that are in the possession, custody, or

1 control of military authorities and are intended to be
2 used by the prosecution as evidence at the hearing.

3 “(D) Information regarding of the existence of
4 any evidence known to the Government counsel that
5 reasonably tends to negate the guilt of the accused
6 of an offense charged or reduce the degree of guilt
7 of an offense charged.

8 “(3) At the investigation, the accused shall have the
9 opportunity to cross-examine a witness about the matters
10 set forth in the charge or specification if the witness is
11 available, and to present evidence relevant to the investiga-
12 tion. The investigating officer shall examine relevant avail-
13 able witness and relevant evidence requested by the ac-
14 cused.

15 “(4) Notwithstanding paragraph (3), if the investiga-
16 tion of charges under this section (article) involves a com-
17 plaining witness, the complaining witness shall be given
18 the opportunity to testify at the investigation, but shall
19 not be required to testify at the investigation. If the com-
20 plaining witness declines to testify at the investigation, the
21 complaining witness shall be deemed to be unavailable as
22 a witness for purposes of the investigation.

23 “(5) In this subsection, the term ‘complaining wit-
24 ness’ means a person who—

1 “(A) is alleged to have suffered a direct phys-
2 ical, emotional, or pecuniary harm as a result of the
3 matters set forth in a charge or specification being
4 investigated; and

5 “(B) is named in one of the specifications.”.

6 (c) **ELIMINATION OF ENTITLEMENT TO REINVES-**
7 **TIGATION.**—Subsection (c) of section 832 of title 10,
8 United States Code (article 32 of the Uniform Code of
9 Military Justice) is amended by striking “unless it is de-
10 manded” and all that follows through “in his own behalf”.

11 (d) **APPLICATION OF AMENDMENTS.**—The amend-
12 ments made by this section shall take effect on the date
13 that is 180 days after the date of the enactment of this
14 Act and shall apply with respect to charges preferred
15 under section 830 of title 10, United States Code (article
16 30 of the Uniform Code of Military Justice) on or after
17 the date of the enactment of this Act.

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