

Calendar No. 251

113TH CONGRESS
1ST SESSION**S. 1752**

To reform procedures for determinations to proceed to trial by court-martial for certain offenses under the Uniform Code of Military Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2013

Mrs. GILLIBRAND introduced the following bill; which was read the first time

NOVEMBER 21, 2013

Read the second time and placed on the calendar

A BILL

To reform procedures for determinations to proceed to trial by court-martial for certain offenses under the Uniform Code of Military Justice, 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Justice Im-
5 provement Act of 2013”.

1 **SEC. 2. MODIFICATION OF AUTHORITY TO DETERMINE TO**
2 **PROCEED TO TRIAL BY COURT-MARTIAL ON**
3 **CHARGES ON CERTAIN OFFENSES WITH AU-**
4 **THORIZED MAXIMUM SENTENCE OF CON-**
5 **FINEMENT OF MORE THAN ONE YEAR.**

6 (a) MODIFICATION OF AUTHORITY.—

7 (1) IN GENERAL.—

8 (A) MILITARY DEPARTMENTS.—With re-
9 spect to charges under chapter 47 of title 10,
10 United States Code (the Uniform Code of Mili-
11 tary Justice), that allege an offense specified in
12 paragraph (2) and not excluded under para-
13 graph (3), the Secretary of Defense shall re-
14 quire the Secretaries of the military depart-
15 ments to provide for the determination under
16 section 830(b) of such chapter (article 30(b) of
17 the Uniform Code of Military Justice) on
18 whether to try such charges by court-martial as
19 provided in paragraph (4).

20 (B) HOMELAND SECURITY.—With respect
21 to charges under chapter 47 of title 10, United
22 States Code (the Uniform Code of Military Jus-
23 tice), that allege an offense specified in para-
24 graph (2) and not excluded under paragraph
25 (3) against a member of the Coast Guard
26 (when it is not operating as a service in the

1 Navy), the Secretary of Homeland Security
2 shall provide for the determination under sec-
3 tion 830(b) of such chapter (article 30(b) of the
4 Uniform Code of Military Justice) on whether
5 to try such charges by court-martial as provided
6 in paragraph (4).

7 (2) COVERED OFFENSES.—An offense specified
8 in this paragraph is an offense as follows:

9 (A) An offense under chapter 47 of title
10 10, United States Code (the Uniform Code of
11 Military Justice), that is triable by court-mar-
12 tial under that chapter for which the maximum
13 punishment authorized under that chapter in-
14 cludes confinement for more than one year.

15 (B) A conspiracy to commit an offense
16 specified in subparagraph (A) as punishable
17 under section 881 of title 10, United States
18 Code (article 81 of the Uniform Code of Mili-
19 tary Justice).

20 (C) A solicitation to commit an offense
21 specified in subparagraph (A) as punishable
22 under section 882 of title 10, United States
23 Code (article 82 of the Uniform Code of Mili-
24 tary Justice).

1 (D) An attempt to commit an offense spec-
2 ified in subparagraphs (A) through (C) as pun-
3 ishable under section 880 of title 10, United
4 States Code (article 80 of the Uniform Code of
5 Military Justice).

6 (3) EXCLUDED OFFENSES.—Paragraph (1)
7 does not apply to an offense as follows:

8 (A) An offense under sections 883 through
9 917 of title 10, United States Code (articles 83
10 through 117 of the Uniform Code of Military
11 Justice).

12 (B) An offense under section 933 or 934
13 of title 10, United States Code (articles 133
14 and 134 of the Uniform Code of Military Jus-
15 tice).

16 (C) A conspiracy to commit an offense
17 specified in subparagraph (A) or (B) as punish-
18 able under section 881 of title 10, United
19 States Code (article 81 of the Uniform Code of
20 Military Justice).

21 (D) A solicitation to commit an offense
22 specified in subparagraph (A) or (B) as punish-
23 able under section 882 of title 10, United
24 States Code (article 82 of the Uniform Code of
25 Military Justice).

1 (E) An attempt to commit an offense spec-
2 ified in subparagraph (A) through (D) as pun-
3 ishable under section 880 of title 10, United
4 States Code (article 80 of the Uniform Code of
5 Military Justice).

6 (4) REQUIREMENTS AND LIMITATIONS.—The
7 disposition of charges pursuant to paragraph (1)
8 shall be subject to the following:

9 (A) The determination whether to try such
10 charges by court-martial shall be made by a
11 commissioned officer of the Armed Forces des-
12 ignated in accordance with regulations pre-
13 scribed for purposes of this subsection from
14 among commissioned officers of the Armed
15 Forces in grade O–6 or higher who—

16 (i) are available for detail as trial
17 counsel under section 827 of title 10,
18 United States Code (article 27 of the Uni-
19 form Code of Military Justice);

20 (ii) have significant experience in
21 trials by general or special court-martial;
22 and

23 (iii) are outside the chain of command
24 of the member subject to such charges.

1 (B) Upon a determination under subpara-
2 graph (A) to try such charges by court-martial,
3 the officer making that determination shall de-
4 termine whether to try such charges by a gen-
5 eral court-martial convened under section 822
6 of title 10, United States Code (article 22 of
7 the Uniform Code of Military Justice), or a spe-
8 cial court-martial convened under section 823
9 of title 10, United States Code (article 23 of
10 the Uniform Code of Military Justice).

11 (C) A determination under subparagraph
12 (A) to try charges by court-martial shall include
13 a determination to try all known offenses, in-
14 cluding lesser included offenses.

15 (D) The determination to try such charges
16 by court-martial under subparagraph (A), and
17 by type of court-martial under subparagraph
18 (B), shall be binding on any applicable con-
19 vening authority for a trial by court-martial on
20 such charges.

21 (E) The actions of an officer described in
22 subparagraph (A) in determining under that
23 subparagraph whether or not to try charges by
24 court-martial shall be free of unlawful or unau-
25 thorized influence or coercion.

1 (F) The determination under subpara-
 2 graph (A) not to proceed to trial of such
 3 charges by general or special court-martial shall
 4 not operate to terminate or otherwise alter the
 5 authority of commanding officers to refer such
 6 charges for trial by summary court-martial con-
 7 vened under section 824 of title 10, United
 8 States Code (article 24 of the Uniform Code of
 9 Military Justice), or to impose non-judicial pun-
 10 ishment in connection with the conduct covered
 11 by such charges as authorized by section 815 of
 12 title 10, United States Code (article 15 of the
 13 Uniform Code of Military Justice).

14 (5) CONSTRUCTION WITH CHARGES ON OTHER
 15 OFFENSES.—Nothing in this subsection shall be con-
 16 strued to alter or affect the disposition of charges
 17 under chapter 47 of title 10, United States Code
 18 (the Uniform Code of Military Justice), that allege
 19 an offense triable by court-martial under that chap-
 20 ter for which the maximum punishment authorized
 21 under that chapter includes confinement for one
 22 year or less.

23 (6) POLICIES AND PROCEDURES.—

24 (A) IN GENERAL.—The Secretaries of the
 25 military departments and the Secretary of

1 Homeland Security (with respect to the Coast
2 Guard when it is not operating as a service in
3 the Navy) shall revise policies and procedures
4 as necessary to comply with this subsection.

5 (B) UNIFORMITY.—The General Counsel
6 of the Department of Defense and the General
7 Counsel of the Department of Homeland Secu-
8 rity shall jointly review the policies and proce-
9 dures revised under this paragraph in order to
10 ensure that any lack of uniformity in policies
11 and procedures, as so revised, among the mili-
12 tary departments and the Department of
13 Homeland Security does not render unconstitu-
14 tional any policy or procedure, as so revised.

15 (7) MANUAL FOR COURTS-MARTIAL.—The Sec-
16 retary of Defense shall recommend such changes to
17 the Manual for Courts-Martial as are necessary to
18 ensure compliance with this subsection.

19 (b) EFFECTIVE DATE AND APPLICABILITY.—Sub-
20 section (a), and the revisions required by that subsection,
21 shall take effect on the date that is 180 days after the
22 date of the enactment of this Act, and shall apply with
23 respect to charges preferred under section 830 of title 10,
24 United States Code (article 30 of the Uniform Code of
25 Military Justice), on or after such effective date.

1 **SEC. 3. MODIFICATION OF OFFICERS AUTHORIZED TO CON-**
2 **VENE GENERAL AND SPECIAL COURTS-MAR-**
3 **TIAL.**

4 (a) IN GENERAL.—Subsection (a) of section 822 of
5 title 10, United States Code (article 22 of the Uniform
6 Code of Military Justice), is amended—

7 (1) by redesignating paragraphs (8) and (9) as
8 paragraphs (9) and (10), respectively; and

9 (2) by inserting after paragraph (7) the fol-
10 lowing new paragraph (8):

11 “(8) the officers in the offices established pur-
12 suant to section 3(c) of the Military Justice Im-
13 provement Act of 2013 or officers in the grade of O-
14 6 or higher who are assigned such responsibility by
15 the Chief of Staff of the Army, the Chief of Naval
16 Operations, the Chief of Staff of the Air Force, the
17 Commandant of the Marine Corps, or the Com-
18 mandant of the Coast Guard, but only with respect
19 to offenses to which section 2(a)(1) of the Military
20 Justice Improvement Act of 2013 applies;”.

21 (b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
22 MAND OF ACCUSED OR VICTIM.—Such section (article) is
23 further amended by adding at the end the following new
24 subsection:

1 “(c) An officer specified in subsection (a)(8) may not
 2 convene a court-martial under this section if the officer
 3 is in the chain of command of the accused or the victim.”.

4 (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-
 5 TIAL.—

6 (1) OFFICES REQUIRED.—Each Chief of Staff
 7 of the Armed Forces or Commandant specified in
 8 paragraph (8) of section 822(a) of title 10, United
 9 States Code (article 22(a) of the Uniform Code of
 10 Military Justice), as amended by subsection (a),
 11 shall establish an office to do the following:

12 (A) To convene general and special courts-
 13 martial under sections 822 and 823 of title 10,
 14 United States Code (articles 22 and 23 of the
 15 Uniform Code of Military Justice), pursuant to
 16 paragraph (8) of section 822(a) of title 10,
 17 United States Code (article 22(a) of the Uni-
 18 form Code of Military Justice), as so amended,
 19 with respect to offenses to which section 2(a)(1)
 20 applies.

21 (B) To detail under section 825 of title 10,
 22 United States Code (article 25 of the Uniform
 23 Code of Military Justice), members of courts-
 24 martial convened as described in subparagraph
 25 (A).

1 (2) PERSONNEL.—The personnel of each office
2 established under paragraph (1) shall consist of such
3 members of the Armed Forces and civilian personnel
4 of the Department of Defense, or such members of
5 the Coast Guard or civilian personnel of the Depart-
6 ment of Homeland Security, as may be detailed or
7 assigned to the office by the Chief of Staff or Com-
8 mandant concerned. The members and personnel so
9 detailed or assigned, as the case may be, shall be de-
10 tailed or assigned from personnel billets in existence
11 on the date of the enactment of this Act.

12 **SEC. 4. DISCHARGE USING OTHERWISE AUTHORIZED PER-**
13 **SONNEL AND RESOURCES.**

14 (a) IN GENERAL.—The Secretaries of the military
15 departments and the Secretary of Homeland Security
16 (with respect to the Coast Guard when it is not operating
17 as a service in the Navy) shall carry out sections 2 and
18 3 (and the amendments made by section 3) using per-
19 sonnel, funds, and resources otherwise authorized by law.

20 (b) NO AUTHORIZATION OF ADDITIONAL PER-
21 SONNEL OR RESOURCES.—Sections 2 and 3 (and the
22 amendments made by section 3) shall not be construed
23 as authorizations for personnel, personnel billets, or funds
24 for the discharge of the requirements in such sections.

1 **SEC. 5. MONITORING AND ASSESSMENT OF MODIFICATION**
2 **OF AUTHORITIES ON COURTS-MARTIAL BY**
3 **INDEPENDENT PANEL ON REVIEW AND AS-**
4 **SESSMENT OF PROCEEDINGS UNDER THE**
5 **UNIFORM CODE OF MILITARY JUSTICE.**

6 Section 576(d)(2) of the National Defense Authoriza-
7 tion Act for Fiscal Year 2013 (Public Law 112–239; 126
8 Stat. 1762) is amended—

9 (1) by redesignating subparagraph (J) as sub-
10 paragraph (K); and

11 (2) by inserting after subparagraph (I) the fol-
12 lowing new subparagraph (J):

13 “(J) Monitor and assess the implementation
14 and efficacy of sections 2 through 4 of the Military
15 Justice Improvement Act of 2013, and the amend-
16 ments made by such sections.”.

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