

113TH CONGRESS
1ST SESSION

S. 967

To amend title 10, United States Code, to modify various authorities relating to procedures for courts-martial under the Uniform Code of Military Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2013

Mrs. GILLIBRAND (for herself, Mrs. BOXER, Ms. COLLINS, Mr. BLUMENTHAL, Mr. BEGICH, Ms. MIKULSKI, Mr. FRANKEN, Mr. COONS, Ms. HIRONO, Mr. JOHANNES, Mrs. SHAHEEN, Mr. PRYOR, Mr. SCHATZ, Mr. ROCKEFELLER, Mr. GRASSLEY, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to modify various authorities relating to procedures for courts-martial 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 OFFENSES WITH AUTHORIZED**
4 **MAXIMUM SENTENCE OF CONFINEMENT OF**
5 **MORE THAN ONE YEAR.**

6 (a) MODIFICATION OF AUTHORITY.—

7 (1) IN GENERAL.—With respect to charges
8 under chapter 47 of title 10, United States Code
9 (the Uniform Code of Military Justice), that allege
10 an offense, other than an offense specified in para-
11 graph (2), that is triable by court-martial under that
12 chapter for which the maximum punishment author-
13 ized under that chapter includes confinement for
14 more than one year, the Secretary of Defense shall
15 require the Secretaries of the military departments
16 to provide for the determination under section
17 830(b) of such chapter (article 30(b) of the Uniform
18 Code of Military Justice) on whether to try such
19 charges by court-martial as provided in paragraph
20 (3).

21 (2) EXCLUDED OFFENSES.—Paragraph (1)
22 does not apply to an offense as follows:

23 (A) An offense under sections 883 through
24 891 of title 10, United States Code (articles 83
25 through 91 of the Uniform Code of Military
26 Justice).

1 (B) An offense under sections 893 through
2 917 of title 10, United States Code (articles 93
3 through 117 of the Uniform Code of Military
4 Justice).

5 (C) An offense under section 933 of title
6 10, United States Code (article 133 of the Uni-
7 form Code of Military Justice).

8 (3) REQUIREMENTS AND LIMITATIONS.—The
9 disposition of charges pursuant to paragraph (1)
10 shall be subject to the following:

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

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

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

1 (iii) are outside the chain of command
2 of the member subject to such charges.

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

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

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

24 (E) The determination under subpara-
25 graph (A) not to proceed to trial of such

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

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

21 (5) POLICIES AND PROCEDURES OF THE MILI-
22 TARY DEPARTMENTS.—

23 (A) IN GENERAL.—The Secretaries of the
24 military departments shall revise policies and

1 procedures as necessary to comply with this
2 subsection.

3 (B) UNIFORMITY.—The General Counsel
4 of the Department of Defense shall review the
5 policies and procedures revised under this para-
6 graph in order to ensure that any lack of uni-
7 formity in policies and procedures, as so re-
8 vised, among the military departments does not
9 render unconstitutional any policy or procedure,
10 as so revised.

11 (6) MANUAL FOR COURTS-MARTIAL.—The Sec-
12 retary of Defense shall recommend such changes to
13 the Manual for Courts-Martial as are necessary to
14 ensure compliance with this subsection.

15 (b) REPORT.—Not later than 180 days after the date
16 of the enactment of this Act, the Secretary of Defense
17 shall, in consultation with the Secretaries of the military
18 departments, submit to Congress a report on the revisions
19 of policies and procedures necessary to comply with sub-
20 section (a). The report shall include such recommenda-
21 tions for modifications to chapter 47 of title 10, United
22 States Code (the Uniform Code of Military Justice), and
23 the Manual for Courts-Martial as the Secretary of Defense
24 considers appropriate for that purpose.

1 (c) EFFECTIVE DATE AND APPLICABILITY.—Sub-
 2 section (a), and the revisions required by that subsection,
 3 shall take effect on the date that is 180 days after the
 4 date of the enactment of this Act, and shall apply with
 5 respect to charges preferred under section 830 of title 10,
 6 United States Code (article 30 of the Uniform Code of
 7 Military Justice), on or after such effective date.

8 **SEC. 3. MODIFICATION OF MANUAL FOR COURTS-MARTIAL**
 9 **TO ELIMINATE FACTOR RELATING TO CHAR-**
 10 **ACTER AND MILITARY SERVICE OF THE AC-**
 11 **CUSED IN RULE ON INITIAL DISPOSITION OF**
 12 **OFFENSES.**

13 Not later than 180 days after the date of the enact-
 14 ment of this Act, Rule 306 of the Manual for Courts-Mar-
 15 tial (relating to policy on initial disposition of offenses)
 16 shall be amended to strike the character and military serv-
 17 ice of the accused from the factors to be considered by
 18 the disposition authority in disposing of charges.

19 **SEC. 4. MODIFICATION OF OFFICERS AUTHORIZED TO CON-**
 20 **VENE GENERAL AND SPECIAL COURTS-MAR-**
 21 **TIAL.**

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

25 (1) by striking paragraphs (5) through (8);

1 (2) by inserting after paragraph (4) the fol-
2 lowing new paragraph (5):

3 “(5) the officers in the offices established pur-
4 suant to section 4(c) of the Military Justice Im-
5 provement Act of 2013 or officers in the rank of O-
6 6 or higher who are assigned such responsibility by
7 the Chief of Staff of the Army, the Chief of Naval
8 Operations, the Chief of Staff of the Air Force, or
9 the Commandant of the Marine Corps; or”; and

10 (3) by redesignating paragraph (9) as para-
11 graph (6).

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

16 “(c) An officer specified in subsection (a)(5) may not
17 convene a court-martial under this section if the person
18 is in the chain of command of the accused or the victim.”.

19 (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-
20 TIAL.—

21 (1) OFFICES REQUIRED.—Each Chief of Staff
22 of the Armed Forces specified in paragraph (5) of
23 section 822(a) of title 10, United States Code (arti-
24 cle 22(a) of the Uniform Code of Military Justice),

1 as amended by subsection (a), shall establish an of-
2 fice to do the following:

3 (A) To convene general and special courts-
4 martial under sections 822 and 823 of title 10,
5 United States Code (articles 22 and 23 of the
6 Uniform Code of Military Justice), pursuant to
7 paragraph (5) of section 822(a) of title 10,
8 United States Code (article 22(a) of the Uni-
9 form Code of Military Justice), as so amended.

10 (B) To detail under section 826 of title 10,
11 United States Code (article 26 of the Uniform
12 Code of Military Justice), judges of courts-mar-
13 tial convened as described in subparagraph (A).

14 (C) To detail under section 827 of title 10,
15 United States Code (article 26 of the Uniform
16 Code of Military Justice), members of courts-
17 martial convened as described in subparagraph
18 (A).

19 (2) PERSONNEL.—The personnel of each office
20 established under paragraph (1) shall consist of such
21 members of the Armed Forces and civilian personnel
22 of the Department of Defense as may be detailed or
23 assigned to the office by the Chief of Staff con-
24 cerned.

1 **SEC. 5. DEADLINE FOR MILITARY JUDGE TO CALL GEN-**
2 **ERAL AND SPECIAL COURTS-MARTIAL INTO**
3 **SESSION.**

4 In the case of trial by general or special court-martial
5 of charges on an offense determined under section 2(a)(1)
6 to be tried by such court-martial under 47 of title 10,
7 United States Code (the Uniform Code of Military Jus-
8 tice), the military judge shall call the court into session
9 pursuant to section 839 of title 10, United States Code
10 (article 39 of the Uniform Code of Military Justice), not
11 later than 90 days after the date on which the authority
12 determines to try such charges by court-martial.

13 **SEC. 6. MODIFICATION OF AUTHORITIES AND RESPON-**
14 **SIBILITIES OF CONVENING AUTHORITIES IN**
15 **TAKING ACTIONS ON THE FINDINGS AND**
16 **SENTENCES OF COURTS-MARTIAL.**

17 (a) INCLUSION OF WRITTEN JUSTIFICATION FOR
18 CERTAIN ACTIONS ON SENTENCES.—Paragraph (2) of
19 section 860(e) of title 10, United States Code (article
20 60(e) of the Uniform Code of Military Justice), is amend-
21 ed by adding at the end the following new sentence: “In
22 taking such an action (other than an action to approve
23 a sentence), the convening authority or other person tak-
24 ing such action shall prepare a written justification of such
25 action, which written justification shall be made a part
26 of the record of the court-martial.”.

1 (b) PROHIBITION ON DISMISSAL OF FINDING OR
2 CHANGE TO FINDING OF GUILTY OF LESSER INCLUDED
3 OFFENSE.—Such section (such article) is further amend-
4 ed—

5 (1) in paragraph (3), by striking the second
6 sentence; and

7 (2) by adding at the end the following new
8 paragraph:

9 “(4) If a convening authority or other person acts
10 on the findings of a court-martial, the convening authority
11 or other person may not—

12 “(A) dismiss any charge or specification by set-
13 ting aside a finding of guilty thereto; or

14 “(B) change a finding of guilty to a charge or
15 specification to a finding of guilty to an offense that
16 is a lesser included offense of the offense stated in
17 the charge or specification.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the date of the enactment
20 of this Act, and shall apply with respect to findings and
21 sentences of courts-martial reported to convening authori-
22 ties under section 860 of title 10, United States Code (ar-
23 ticle 60 of the Uniform Code of Military Justice), as so
24 amended, on or after such effective date.

1 **SEC. 7. COMMAND ACTION ON REPORTS ON SEXUAL OF-**
2 **FENSES INVOLVING MEMBERS OF THE**
3 **ARMED FORCES.**

4 (a) IMMEDIATE ACTION REQUIRED.—A commanding
5 officer who receives a report of a sexual-related offense
6 involving a member of the Armed Forces in the chain of
7 command of such officer shall act upon the report in ac-
8 cordance with subsection (b) immediately after receipt of
9 the report by the commanding officer.

10 (b) ACTION REQUIRED.—The action required by this
11 subsection with respect to a report described in subsection
12 (a) is the referral of the report to the criminal investiga-
13 tion office with responsibility for investigating that offense
14 of the military department concerned or such other inves-
15 tigation service of the military department concerned as
16 the Secretary of the military department concerned may
17 specify for purposes of this section.

18 **SEC. 8. MONITORING AND ASSESSMENT OF MODIFICATION**
19 **OF AUTHORITIES ON COURTS-MARTIAL BY**
20 **INDEPENDENT PANEL ON REVIEW AND AS-**
21 **SESSMENT OF PROCEEDINGS UNDER THE**
22 **UNIFORM CODE OF MILITARY JUSTICE.**

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

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

3 (2) by inserting after subparagraph (I) the fol-
4 lowing new subparagraph (J):

5 “(J) Monitor and assess the implementation
6 and efficacy of the Military Justice Improvement
7 Act of 2013, and the amendments made by that
8 Act.”.

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