

AMENDMENT NO. _____ Calendar No. _____

Purpose: To further improve procedures relating to courts-martial under the Uniform Code of Military Justice.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 1197

To authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. GILLIBRAND

Viz:

1 Strike section 552 and insert the following:

2 **SEC. 552. MODIFICATION OF AUTHORITY TO DETERMINE**

3 **TO PROCEED TO TRIAL BY COURT-MARTIAL**

4 **ON CHARGES ON CERTAIN SEX-RELATED OF-**

5 **FENSES.**

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 specified in paragraph (2), the Secretary

1 of Defense shall require the Secretaries of the mili-
2 tary departments to provide for the determination
3 under section 830(b) of such chapter (article 30(b)
4 of the Uniform Code of Military Justice) on whether
5 to try such charges by court-martial as provided in
6 paragraph (3).

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

9 (A) Rape or sexual assault under section
10 920 of title 10, United States Code (article 120
11 of the Uniform Code of Military Justice).

12 (B) Stalking under section 920a of title
13 10, United States Code (article 120a of the
14 Uniform Code of Military Justice).

15 (C) Forcible sodomy under section 925 of
16 title 10, United States Code (article 125 of the
17 Uniform Code of Military Justice).

18 (D) A conspiracy to commit an offense
19 specified in subparagraph (A), (B), or (C) as
20 punishable under section 881 of title 10, United
21 States Code (article 81 of the Uniform Code of
22 Military Justice).

23 (E) A solicitation to commit an offense
24 specified in subparagraph (A), (B), or (C) as
25 punishable under section 882 of title 10, United

1 States Code (article 82 of the Uniform Code of
2 Military Justice).

3 (F) An attempt to commit an offense spec-
4 ified in subparagraph (A) through (E) as pun-
5 ishable under section 880 of title 10, United
6 States Code (article 80 of the Uniform Code of
7 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) A determination under subparagraph
14 (A) to try charges by court-martial shall include
15 a determination to try all known offenses under
16 the charges described in paragraph (1), includ-
17 ing lesser included offenses.

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

24 (E) The actions of an officer described in
25 subparagraph (A) in determining under that

1 subparagraph whether or not to try charges by
2 court-martial shall be free of unlawful or unau-
3 thorized influence or coercion.

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

17 (4) CONSTRUCTION WITH CHARGES ON OTHER
18 OFFENSES.—Nothing in this subsection shall be con-
19 strued to alter or affect the disposition of charges
20 under chapter 47 of title 10, United States Code
21 (the Uniform Code of Military Justice), that allege
22 an offense other than an offense specified in para-
23 graph (2).

24 (5) POLICIES AND PROCEDURES OF THE MILI-
25 TARY DEPARTMENTS.—

1 (A) IN GENERAL.—The Secretaries of the
2 military departments shall revise policies and
3 procedures as necessary to comply with this
4 subsection.

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

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

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

1 **SEC. 552A. MODIFICATION OF OFFICERS AUTHORIZED TO**
2 **CONVENE GENERAL AND SPECIAL COURTS-**
3 **MARTIAL.**

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 552A(c) of the National Defense
13 Authorization Act for Fiscal Year 2014 or officers in
14 the grade of O–6 or higher who are assigned such
15 responsibility by the Chief of Staff of the Army, the
16 Chief of Naval Operations, the Chief of Staff of the
17 Air Force, or the Commandant of the Marine Corps,
18 but only with respect to offenses specified in section
19 552(a)(2) of the National Defense Authorization Act
20 for Fiscal Year 2014; or”; and

21 (3) by redesignating paragraph (9) as para-
22 graph (6).

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

1 “(c) An officer specified in subsection (a)(8) may not
2 convene a court-martial under this section if the person
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 specified in paragraph (8) of
8 section 822(a) of title 10, United States Code (arti-
9 cle 22(a) of the Uniform Code of Military Justice),
10 as amended by subsection (a), shall establish an of-
11 fice 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 specified in section
20 552(a)(2).

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

1 (C) To detail under section 827 of title 10,
2 United States Code (article 26 of the Uniform
3 Code of Military Justice), members of courts-
4 martial convened as described in subparagraph
5 (A).

6 (2) PERSONNEL.—The personnel of each office
7 established under paragraph (1) shall consist of such
8 members of the Armed Forces and civilian personnel
9 of the Department of Defense as may be detailed or
10 assigned to the office by the Chief of Staff con-
11 cerned. The members and personnel so detailed or
12 assigned, as the case may be, shall be detailed or as-
13 signed from personnel billets in existence on the date
14 of the enactment of this Act.

15 **SEC. 552B. DISCHARGE USING OTHERWISE AUTHORIZED**
16 **PERSONNEL AND RESOURCES.**

17 (a) IN GENERAL.—The Secretaries of the military
18 departments shall carry out sections 552 and 552A (and
19 the amendments made by section 552A) using personnel,
20 funds, and resources otherwise authorized by law.

21 (b) NO AUTHORIZATION OF ADDITIONAL PER-
22 SONNEL OR RESOURCES.—Sections 552 and 552A (and
23 the amendments made by section 552A) shall not be con-
24 strued as authorizations for personnel, personnel billets,

1 or funds for the discharge of the requirements in such sec-
2 tions.

3 **SEC. 552C. PROHIBITION ON DETAIL OF TRIAL COUNSEL IN**
4 **CHAIN OF COMMAND OF VICTIM OR ACCUSED**
5 **FOR COURTS-MARTIAL OF CERTAIN SEXUAL**
6 **OFFENSES.**

7 (a) PROHIBITION.—Section 827(a) of title 10, United
8 States Code (article 27(a) of the Uniform Code of Military
9 Justice) is amended by adding at the end the following
10 new paragraph:

11 “(3)(A) No person may be detailed as trial counsel
12 for a general or special court-martial on an offense speci-
13 fied in subparagraph (B) who is in the chain of command
14 of the victim or the accused.

15 “(B) The offenses specified in this subparagraph are
16 as follows:

17 “(i) Rape or sexual assault under section 920
18 of this title (article 120).

19 “(ii) Stalking under section 920a of this title
20 (article 120a).

21 “(iii) Forceful sodomy under section 925 of this
22 title (article 125).

23 “(iv) A conspiracy to commit an offense speci-
24 fied in clause (i), (ii), or (iii) as punishable under
25 section 881 of this title (article 81).

1 “(v) A solicitation to commit an offense speci-
2 fied in clause (i), (ii), or (iii) as punishable under
3 section 882 of this title (article 82).

4 “(vi) An attempt to commit an offense specified
5 in clause (i) through (v) as punishable under section
6 880 of this title (article 80).”.

7 **SEC. 552D. MONITORING AND ASSESSMENT OF MODIFICA-**
8 **TION OF AUTHORITIES ON COURTS-MARTIAL**
9 **BY INDEPENDENT PANEL ON REVIEW AND**
10 **ASSESSMENT OF PROCEEDINGS UNDER THE**
11 **UNIFORM CODE OF MILITARY JUSTICE.**

12 Paragraph (2) of section 576(d) of the National De-
13 fense Authorization Act for Fiscal Year 2013 (Public Law
14 112–239; 126 Stat. 1762), as amended by section 546 of
15 this Act, is further amended—

16 (1) by redesignating subparagraph (M) as sub-
17 paragraph (N); and

18 (2) by inserting after subparagraph (L) the fol-
19 lowing new subparagraph (M):

20 “(J) Monitor and assess the implementation
21 and efficacy of sections 552 through 552C of the
22 National Defense Authorization Act for Fiscal Year
23 2014, and the amendments made by such sections.”.