

1 Code (article 6b of the Uniform Code of Mili-  
2 tary Justice), as added by subsection (a).

3 (B) Mechanisms for ensuring that mem-  
4 bers of the Armed Forces and civilian personnel  
5 of the Department of Defense and the Coast  
6 Guard make their best efforts to ensure that  
7 victims are notified of, and accorded, the rights  
8 specified in such section.

9 (C) Mechanisms for the enforcement of  
10 such rights, including mechanisms for applica-  
11 tion for such rights and for consideration and  
12 disposition of applications for such rights.

13 (D) The designation of an authority within  
14 each Armed Force to receive and investigate  
15 complaints relating to the provision or violation  
16 of such rights.

17 (E) Disciplinary sanctions for members of  
18 the Armed Forces and other personnel of the  
19 Department of Defense and Coast Guard who  
20 willfully or wantonly fail to comply with require-  
21 ments relating to such rights.

22 **SEC. 1702. REVISION OF ARTICLE 32 AND ARTICLE 60, UNI-**  
23 **FORM CODE OF MILITARY JUSTICE.**

24 (a) USE OF PRELIMINARY HEARINGS.—

1           (1) IN GENERAL.—Section 832 of title 10,  
2           United States Code (article 32 of the Uniform Code  
3           of Military Justice), is amended to read as follows:

4   **“§ 832. Art. 32. Preliminary hearing**

5           “(a) PRELIMINARY HEARING REQUIRED.—(1) No  
6           charge or specification may be referred to a general court-  
7           martial for trial until completion of a preliminary hearing.

8           “(2) The purpose of the preliminary hearing shall be  
9           limited to the following:

10           “(A) Determining whether there is probable  
11           cause to believe an offense has been committed and  
12           the accused committed the offense.

13           “(B) Determining whether the convening au-  
14           thority has court-martial jurisdiction over the of-  
15           fense and the accused.

16           “(C) Considering the form of charges.

17           “(D) Recommending the disposition that should  
18           be made of the case.

19           “(b) HEARING OFFICER.—(1) A preliminary hearing  
20           under subsection (a) shall be conducted by an impartial  
21           judge advocate certified under section 827(b) of this title  
22           (article 27(b)) whenever practicable or, in exceptional cir-  
23           cumstances in which the interests of justice warrant, by  
24           an impartial hearing officer who is not a judge advocate.  
25           If the hearing officer is not a judge advocate, a judge ad-

1 vocate certified under section 827(b) of this title (article  
2 27(b)) shall be available to provide legal advice to the  
3 hearing officer.

4 “(2) Whenever practicable, when the judge advocate  
5 or other hearing officer is detailed to conduct the prelimi-  
6 nary hearing, the officer shall be equal to or senior in  
7 grade to military counsel detailed to represent the accused  
8 or the Government at the preliminary hearing.

9 “(c) REPORT OF RESULTS.—After conducting a pre-  
10 liminary hearing under subsection (a), the judge advocate  
11 or other officer conducting the preliminary hearing shall  
12 prepare a report that addresses the matters specified in  
13 subsections (a)(2) and (f).

14 “(d) RIGHTS OF ACCUSED AND VICTIM.—(1) The ac-  
15 cused shall be advised of the charges against the accused  
16 and of the accused’s right to be represented by counsel  
17 at the preliminary hearing under subsection (a). The ac-  
18 cused has the right to be represented at the preliminary  
19 hearing as provided in section 838 of this title (article 38)  
20 and in regulations prescribed under that section.

21 “(2) The accused may cross-examine witnesses who  
22 testify at the preliminary hearing and present additional  
23 evidence in defense and mitigation, relevant to the limited  
24 purposes of the hearing, as provided for in paragraph (4)  
25 and subsection (a)(2).

1           “(3) A victim may not be required to testify at the  
2 preliminary hearing. A victim who declines to testify shall  
3 be deemed to be not available for purposes of the prelimi-  
4 nary hearing.

5           “(4) The presentation of evidence and examination  
6 (including cross-examination) of witnesses at a prelimi-  
7 nary hearing shall be limited to the matters relevant to  
8 the limited purposes of the hearing, as provided in sub-  
9 section (a)(2).

10          “(e) RECORDING OF PRELIMINARY HEARING.—A  
11 preliminary hearing under subsection (a) shall be recorded  
12 by a suitable recording device. The victim may request the  
13 recording and shall have access to the recording as pre-  
14 scribed by the Manual for Courts-Martial.

15          “(f) EFFECT OF EVIDENCE OF UNCHARGED OF-  
16 FENSE.—If evidence adduced in a preliminary hearing  
17 under subsection (a) indicates that the accused committed  
18 an uncharged offense, the hearing officer may consider the  
19 subject matter of that offense without the accused having  
20 first been charged with the offense if the accused—

21                   “(1) is present at the preliminary hearing;

22                   “(2) is informed of the nature of each un-  
23 charged offense considered; and

1           “(3) is afforded the opportunities for represen-  
2           tation, cross-examination, and presentation con-  
3           sistent with subsection (d).

4           “(g) EFFECT OF VIOLATION.—The requirements of  
5           this section are binding on all persons administering this  
6           chapter, but failure to follow the requirements does not  
7           constitute jurisdictional error.

8           “(h) VICTIM DEFINED.—In this section, the term  
9           ‘victim’ means a person who—

10           “(1) is alleged to have suffered a direct phys-  
11           ical, emotional, or pecuniary harm as a result of the  
12           matters set forth in a charge or specification being  
13           considered; and

14           “(2) is named in one of the specifications.”.

15           (2) CLERICAL AMENDMENT.—The table of sec-  
16           tions at the beginning of subchapter VI of chapter  
17           47 of such title is amended by striking the item re-  
18           lating to section 832 and inserting the following new  
19           item:

“832. Art 32. Preliminary hearing.”.

20           (b) ELIMINATION OF UNLIMITED COMMAND PRE-  
21           ROGATIVE AND DISCRETION; IMPOSITION OF ADDITIONAL  
22           LIMITATIONS.—Subsection (c) of section 860 of title 10,  
23           United States Code (article 60 of the Uniform Code of  
24           Military Justice), is amended to read as follows:

1           “(c)(1) Under regulations of the Secretary concerned,  
2 a commissioned officer commanding for the time being,  
3 a successor in command, or any person exercising general  
4 court-martial jurisdiction may act under this section in  
5 place of the convening authority.

6           “(2)(A) Action on the sentence of a court-martial  
7 shall be taken by the convening authority or by another  
8 person authorized to act under this section. Subject to reg-  
9 ulations of the Secretary concerned, such action may be  
10 taken only after consideration of any matters submitted  
11 by the accused under subsection (b) or after the time for  
12 submitting such matters expires, whichever is earlier.

13           “(B) Except as provided in paragraph (4), the con-  
14 vening authority or another person authorized to act  
15 under this section may approve, disapprove, commute, or  
16 suspend the sentence of the court-martial in whole or in  
17 part.

18           “(C) If the convening authority or another person au-  
19 thorized to act under this section acts to disapprove, com-  
20 mute, or suspend, in whole or in part, the sentence of the  
21 court-martial for an offense (other than a qualifying of-  
22 fense), the convening authority or other person shall pro-  
23 vide, at that same time, a written explanation of the rea-  
24 sons for such action. The written explanation shall be  
25 made a part of the record of the trial and action thereon.

1       “(3)(A) Action on the findings of a court-martial by  
2 the convening authority or by another person authorized  
3 to act under this section is not required.

4       “(B) If the convening authority or another person au-  
5 thorized to act under this section acts on the findings of  
6 a court-martial, the convening authority or other person—

7           “(i) may not dismiss any charge or specifica-  
8 tion, other than a charge or specification for a quali-  
9 fying offense, by setting aside a finding of guilty  
10 thereto; or

11           “(ii) may not change a finding of guilty to a  
12 charge or specification, other than a charge or speci-  
13 fication for a qualifying offense, to a finding of  
14 guilty to an offense that is a lesser included offense  
15 of the offense stated in the charge or specification.

16       “(C) If the convening authority or another person au-  
17 thorized to act under this section acts on the findings to  
18 dismiss or change any charge or specification for an of-  
19 fense (other than a qualifying offense), the convening au-  
20 thority or other person shall provide, at that same time,  
21 a written explanation of the reasons for such action. The  
22 written explanation shall be made a part of the record of  
23 the trial and action thereon.

24       “(D)(i) In this subsection, the term ‘qualifying of-  
25 fense’ means, except in the case of an offense excluded

1 pursuant to clause (ii), an offense under this chapter for  
2 which—

3 “(I) the maximum sentence of confinement that  
4 may be adjudged does not exceed two years; and

5 “(II) the sentence adjudged does not include  
6 dismissal, a dishonorable or bad-conduct discharge,  
7 or confinement for more than six months.

8 “(ii) Such term does not include any of the following:

9 “(I) An offense under subsection (a) or (b) of  
10 section 920 of this title (article 120).

11 “(II) An offense under section 920b or 925 of  
12 this title (articles 120b and 125).

13 “(III) Such other offenses as the Secretary of  
14 Defense may specify by regulation.

15 “(4)(A) Except as provided in subparagraph (B) or  
16 (C), the convening authority or another person authorized  
17 to act under this section may not disapprove, commute,  
18 or suspend in whole or in part an adjudged sentence of  
19 confinement for more than six months or a sentence of  
20 dismissal, dishonorable discharge, or bad conduct dis-  
21 charge.

22 “(B) Upon the recommendation of the trial counsel,  
23 in recognition of the substantial assistance by the accused  
24 in the investigation or prosecution of another person who  
25 has committed an offense, the convening authority or an-

1 other person authorized to act under this section shall  
2 have the authority to disapprove, commute, or suspend the  
3 adjudged sentence in whole or in part, even with respect  
4 to an offense for which a mandatory minimum sentence  
5 exists.

6 “(C) If a pre-trial agreement has been entered into  
7 by the convening authority and the accused, as authorized  
8 by Rule for Courts–Martial 705, the convening authority  
9 or another person authorized to act under this section  
10 shall have the authority to approve, disapprove, commute,  
11 or suspend a sentence in whole or in part pursuant to the  
12 terms of the pre-trial agreement, subject to the following  
13 limitations for convictions of offenses that involve a man-  
14 datory minimum sentence:

15 “(i) If a mandatory minimum sentence of a dis-  
16 honorable discharge applies to an offense for which  
17 the accused has been convicted, the convening au-  
18 thority or another person authorized to act under  
19 this section may commute the dishonorable dis-  
20 charge to a bad conduct discharge pursuant to the  
21 terms of the pre-trial agreement.

22 “(ii) Except as provided in clause (i), if a man-  
23 datory minimum sentence applies to an offense for  
24 which the accused has been convicted, the convening  
25 authority or another person authorized to act under

1       this section may not disapprove, otherwise commute,  
2       or suspend the mandatory minimum sentence in  
3       whole or in part, unless authorized to do so under  
4       subparagraph (B).”.

5       (c) CONFORMING AMENDMENTS.—

6           (1) REFERENCES TO SOLE DISCRETION AND  
7       OTHER PERSONS AUTHORIZED TO ACT UNDER ARTI-  
8       CLE 60.—Section 860 of title 10, United States Code  
9       (article 60 of the Uniform Code of Military Justice),  
10      is further amended—

11           (A) in subsection (b)(2), by striking “or  
12      other person taking action under this section”  
13      and inserting “or another person authorized to  
14      act under this section”;

15           (B) in subsection (d), by striking “or other  
16      person taking action under this section” the  
17      first place it appears and inserting “or another  
18      person authorized to act under this section”;

19           (C) in subsection (e)(1), by striking “or  
20      other person taking action under this section, in  
21      his sole discretion,” and inserting “or another  
22      person authorized to act under this section”;  
23      and

24           (D) in subsection (e)(3), by striking “or  
25      other person taking action under this section”

1           and inserting “or another person authorized to  
2           act under this section”.

3           (2) OTHER AUTHORITY FOR CONVENING AU-  
4           THORITY TO SUSPEND SENTENCE.—Section 871(d)  
5           of such title (article 71(d) of the Uniform Code of  
6           Military Justice) is amended by adding at the end  
7           the following new sentence: “Paragraphs (2) and (4)  
8           of subsection (c) of section 860 of this title (article  
9           60) shall apply to any decision by the convening au-  
10          thority or another person authorized to act under  
11          this section to suspend the execution of any sentence  
12          or part thereof under this subsection.”.

13          (3) REFERENCES TO ARTICLE 32 INVESTIGA-  
14          TION.—(A) Section 802(d)(1)(A) of such title (arti-  
15          cle 2(d)(1)(A) of the Uniform Code of Military Jus-  
16          tice) is amended by striking “investigation under  
17          section 832” and inserting “a preliminary hearing  
18          under section 832”.

19          (B) Section 834(a)(2) of such title (article  
20          34(a)(2) of the Uniform Code of Military Justice) is  
21          amended by striking “investigation under section  
22          832 of this title (article 32) (if there is such a re-  
23          port)” and inserting “a preliminary hearing under  
24          section 832 of this title (article 32)”.

1           (C) Section 838(b)(1) of such title (article  
2           38(b)(1) of the Uniform Code of Military Justice) is  
3           amended by striking “an investigation under section  
4           832” and inserting “a preliminary hearing under  
5           section 832”.

6           (D) Section 847(a)(1) of such title (article  
7           47(a)(1) of the Uniform Code of Military Justice) is  
8           amended by striking “an investigation pursuant to  
9           section 832(b) of this title (article 32(b))” and in-  
10          serting “a preliminary hearing pursuant to section  
11          832 of this title (article 32)”.

12          (E) Section 948b(d)(1)(C) of such title is  
13          amended by striking “pretrial investigation” and in-  
14          serting “preliminary hearing”.

15          (d) EFFECTIVE DATES.—

16           (1) ARTICLE 32 AMENDMENTS.—The amend-  
17          ments made by subsections (a) and (c)(3) shall take  
18          effect one year after the date of the enactment of  
19          this Act and shall apply with respect to offenses  
20          committed under chapter 47 of title 10, United  
21          States Code (the Uniform Code of Military Justice),  
22          on or after that effective date.

23           (2) ARTICLE 60 AMENDMENTS.—The amend-  
24          ments made by subsection (b) and paragraphs (1)  
25          and (2) of subsection (c) shall take effect 180 days

1 after the date of the enactment of this Act and shall  
2 apply with respect to offenses committed under  
3 chapter 47 of title 10, United States Code (the Uni-  
4 form Code of Military Justice), on or after that ef-  
5 fective date.

6 **SEC. 1703. ELIMINATION OF FIVE-YEAR STATUTE OF LIM-**  
7 **TATIONS ON TRIAL BY COURT-MARTIAL FOR**  
8 **ADDITIONAL OFFENSES INVOLVING SEX-RE-**  
9 **LATED CRIMES.**

10 (a) INCLUSION OF ADDITIONAL OFFENSES.—Section  
11 843(a) of title 10, United States Code (article 43(a) of  
12 the Uniform Code of Military Justice), is amended by  
13 striking “rape, or rape of a child” and inserting “rape  
14 or sexual assault, or rape or sexual assault of a child”.

15 (b) CONFORMING AMENDMENT.—Section  
16 843(b)(2)(B)(i) of title 10, United States Code (article  
17 43(b)(2)(B)(i) of the Uniform Code of Military Justice),  
18 is amended by inserting before the period at the end the  
19 following: “, unless the offense is covered by subsection  
20 (a)”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall take effect on the date of the enactment  
23 of this Act, and shall apply with respect to an offense cov-  
24 ered by section 920(b) or 920b(b) of title 10, United  
25 States Code (article 120(b) or 120b(b) of the Uniform