

113TH CONGRESS
1ST SESSION

S. 1644

To amend title 10, United States Code, to provide for preliminary hearings on alleged offenses under the Uniform Code of Military Justice.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 2013

Mrs. BOXER (for herself, Mr. GRAHAM, Mrs. SHAHEEN, Mr. BLUNT, Mrs. McCASKILL, Mrs. GILLIBRAND, Mr. BAUCUS, Mr. BLUMENTHAL, Ms. HIRONO, Ms. AYOTTE, Ms. COLLINS, Mr. MCCAIN, and Mr. TESTER) 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 provide for preliminary hearings on alleged offenses under the Uniform Code of Military Justice.

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 “Article 32 Reform
5 Act”.

1 **SEC. 2. PRELIMINARY HEARINGS ON ALLEGED OFFENSES**
2 **UNDER THE UNIFORM CODE OF MILITARY**
3 **JUSTICE.**

4 (a) PRELIMINARY HEARINGS.—

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

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

9 “(a)(1) No charge or specification may be referred
10 to a general court-martial for trial until a judge advocate
11 described in paragraph (2) conducts a preliminary hear-
12 ing.

13 “(2) A judge advocate may conduct a preliminary
14 hearing if the judge advocate has a grade equal to or high-
15 er than the grade of the trial counsel and, if the accused
16 is represented by military counsel, the defense counsel who
17 will represent the accused at the preliminary hearing.

18 “(3) The preliminary hearing shall be limited to the
19 purpose of determining whether there is probable cause
20 to believe an offense has been committed and whether the
21 accused committed it.

22 “(4) After conducting the preliminary hearing, the
23 judge advocate conducting the preliminary hearing shall
24 prepare a report that includes the following:

25 “(A) A determination as to court-martial juris-
26 diction over the offense and the accused.

1 “(B) A determination as to probable cause.

2 “(C) A consideration of the form of charges.

3 “(D) A recommendation as to the disposition
4 which should be made of the case.

5 “(b)(1) The accused shall be advised of the charges
6 against the accused and of the accused’s right to be rep-
7 resented by counsel at the preliminary hearing. The ac-
8 cused has the right to be represented at the preliminary
9 hearing as provided in section 838 of this title (article 38)
10 and in regulations prescribed under that section.

11 “(2) At the preliminary hearing, the accused may
12 cross-examine adverse witnesses if they are available. The
13 accused may offer evidence and call witnesses relevant to
14 the probable cause determination. An objection to evidence
15 on the ground that it was unlawfully acquired may be
16 noted as part of the record.

17 “(3) A victim of the offense may not be required to
18 testify at the preliminary hearing. A victim who declines
19 to testify shall be deemed to be not available for purposes
20 of the preliminary hearing.

21 “(4) The presentation of evidence and examination
22 of witnesses at a preliminary hearing shall be limited to
23 the question of probable cause.

24 “(c) Any preliminary hearing under this section shall
25 be recorded by a court reporter or by a suitable recording

1 device. A copy of the recording and a transcript shall be
 2 provided to any party, and the victim of the offense and
 3 counsel of such victim, upon request.

4 “(d) The requirements of this section are binding on
 5 all persons administering this chapter but failure to follow
 6 them does not constitute jurisdictional error.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-
 8 tions at the beginning of subchapter VI of chapter
 9 47 of such title (the Uniform Code of Military Jus-
 10 tice) is amended by striking the item relating to sec-
 11 tion 832 (article 32) and inserting the following new
 12 item:

“832. Art. 32. Preliminary hearing.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 834(a)(2) of such title (article
 15 34(b)(2) of the Uniform Code of Military Justice) is
 16 amended by striking “the report of investigation”
 17 and inserting “the report of the preliminary hear-
 18 ing”.

19 (2) Section 838(b)(1) of such title (article
 20 38(b)(1) of the Uniform Code of Military Justice) is
 21 amended by striking “an investigation” and insert-
 22 ing “a preliminary hearing”.

23 (c) EFFECTIVE DATE.—The amendments made by
 24 this section shall take effect on the date that is one year
 25 after the date of the enactment of this Act, and shall apply

1 with respect to offenses under chapter 47 of title 10,
2 United States Code (the Uniform Code of Military Jus-
3 tice), that occur on or after such effective date.

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