

116TH CONGRESS
1ST SESSION

S. 1789

To amend title 10, United States Code, to reform procedures for determinations on disposition of charges and the convening of courts-martial for certain offenses under the Uniform Code of Military Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2019

Mrs. GILLIBRAND (for herself, Mr. GRASSLEY, Mrs. SHAHEEN, Mr. LEAHY, Mr. DURBIN, Ms. WARREN, Mr. BENNET, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. WYDEN, Ms. HIRONO, Ms. HASSAN, Ms. BALDWIN, Mr. COONS, Mr. MENENDEZ, Mrs. FEINSTEIN, Mr. UDALL, Ms. KLOBUCHAR, Mr. BROWN, Ms. MURKOWSKI, Ms. SMITH, Mr. BOOKER, Mr. SANDERS, Mr. CASEY, Mr. CRUZ, Mr. PAUL, Ms. HARRIS, Mr. MARKEY, Mr. HEINRICH, and Ms. DUCKWORTH) 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 reform procedures for determinations on disposition of charges and the convening of courts-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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Military Justice Im-
3 provement Act of 2019”.

4 **SEC. 2. IMPROVEMENT OF DETERMINATIONS ON DISPOSI-**
5 **TION OF CHARGES FOR CERTAIN OFFENSES**
6 **UNDER UCMJ WITH AUTHORIZED MAXIMUM**
7 **SENTENCE OF CONFINEMENT OF MORE THAN**
8 **ONE YEAR.**

9 (a) IMPROVEMENT OF DETERMINATIONS.—

10 (1) MILITARY DEPARTMENTS.—With respect to
11 charges under chapter 47 of title 10, United States
12 Code (the Uniform Code of Military Justice), that
13 allege an offense specified in subsection (b) and not
14 excluded under subsection (c), the Secretary of De-
15 fense shall require the Secretaries of the military de-
16 partments to provide as described in subsection (d)
17 for the determinations as follows:

18 (A) Determinations under section 830 of
19 such chapter (article 30 of the Uniform Code of
20 Military Justice) on the preferral of charges.

21 (B) Determinations under section 830 of
22 such chapter (article 30 of the Uniform Code of
23 Military Justice) on the disposition of charges.

24 (C) Determinations under section 834 of
25 such chapter (article 34 of the Uniform Code of
26 Military Justice) on the referral of charges.

(2) HOMELAND SECURITY.—With respect to charges under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that allege an offense specified in subsection (b) and not excluded under subsection (c) against a member of the Coast Guard (when it is not operating as a service in the Navy), the Secretary of Homeland Security shall provide as described in subsection (d) for the determinations as follows:

(A) Determinations under section 830 of such chapter (article 30(a) of the Uniform Code of Military Justice) on the preferral of charges.

(B) Determinations under section 830 of such chapter (article 30 of the Uniform Code of Military Justice) on the disposition of charges.

(C) Determinations under section 834 of such chapter (article 34 of the Uniform Code of Military Justice) on the referral of charges.

(b) COVERED OFFENSES.—An offense specified in this subsection is an offense as follows:

(1) An offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), for which the maximum punishment authorized under that chapter includes confinement for more than one year.

1 (2) The offense of obstructing justice under sec-
2 tion 931b of title 10, United States Code (article
3 131b of the Uniform Code of Military Justice), re-
4 gardless of the maximum punishment authorized
5 under that chapter for such offense.

6 (3) The offense of retaliation for reporting a
7 crime under section 932 of title 10, United States
8 Code (article 132 of the Uniform Code of Military
9 Justice), regardless of the maximum punishment au-
10 thorized under that chapter for such offense.

11 (4) A conspiracy to commit an offense specified
12 in paragraphs (1) through (3) as punishable under
13 section 881 of title 10, United States Code (article
14 81 of the Uniform Code of Military Justice).

15 (5) A solicitation to commit an offense specified
16 in paragraphs (1) through (3) as punishable under
17 section 882 of title 10, United States Code (article
18 82 of the Uniform Code of Military Justice).

19 (6) An attempt to commit an offense specified
20 in paragraphs (1) through (3) as punishable under
21 section 880 of title 10, United States Code (article
22 80 of the Uniform Code of Military Justice).

23 (c) EXCLUDED OFFENSES.—Subsection (a) does not
24 apply to an offense as follows:

1 (1) An offense under sections 883 through 917
2 of title 10, United States Code (articles 83 through
3 117 of the Uniform Code of Military Justice).

4 (2) An offense under section 933 or 934 of title
5 10, United States Code (articles 133 and 134 of the
6 Uniform Code of Military Justice).

7 (3) A conspiracy to commit an offense specified
8 in paragraph (1) or (2) as punishable under section
9 881 of title 10, United States Code (article 81 of the
10 Uniform Code of Military Justice).

11 (4) A solicitation to commit an offense specified
12 in paragraph (1) or (2) as punishable under section
13 882 of title 10, United States Code (article 82 of the
14 Uniform Code of Military Justice).

15 (5) An attempt to commit an offense specified
16 in paragraph (1) or (2) as punishable under section
17 880 of title 10, United States Code (article 80 of the
18 Uniform Code of Military Justice).

19 (d) REQUIREMENTS AND LIMITATIONS.—The dis-
20 position of charges covered by subsection (a) shall be sub-
21 ject to the following:

22 (1) The determination whether to prefer such
23 charges or refer such charges to a court-martial for
24 trial, as applicable, shall be made by a commissioned
25 officer of the Armed Forces designated in accord-

1 ance with regulations prescribed for purposes of this
2 subsection from among commissioned officers of the
3 Armed Forces in grade O–6 or higher who—

4 (A) are available for detail as trial counsel
5 under section 827 of title 10, United States
6 Code (article 27 of the Uniform Code of Military
7 Justice);

8 (B) have significant experience in trials by
9 general or special court-martial; and

10 (C) are outside the chain of command of
11 the member subject to such charges.

12 (2) Upon a determination under paragraph (1)
13 to refer charges to a court-martial for trial, the offi-
14 cer making that determination shall determine
15 whether to refer such charges for trial by a general
16 court-martial convened under section 822 of title 10,
17 United States Code (article 22 of the Uniform Code
18 of Military Justice), or a special court-martial con-
19 vened under section 823 of title 10, United States
20 Code (article 23 of the Uniform Code of Military
21 Justice).

22 (3) A determination under paragraph (1) to
23 prefer charges or refer charges to a court-martial for
24 trial, as applicable, shall cover all known offenses,
25 including lesser included offenses.

1 (4) The determination to prefer charges or
2 refer charges to a court-martial for trial, as applica-
3 ble, under paragraph (1), and the type of court-mar-
4 tial to which to refer under subparagraph (B), shall
5 be binding on any applicable convening authority for
6 the referral of such charges.

7 (5) The actions of an officer described in para-
8 graph (1) in determining under that paragraph
9 whether or not to prefer charges or refer charges to
10 a court-martial for trial, as applicable, shall be free
11 of unlawful or unauthorized influence or coercion.

12 (6) The determination under paragraph (1) not
13 to refer charges to a general or special court-martial
14 for trial shall not operate to terminate or otherwise
15 alter the authority of commanding officers to refer
16 charges for trial by summary court-martial convened
17 under section 824 of title 10, United States Code
18 (article 24 of the Uniform Code of Military Justice),
19 or to impose non-judicial punishment in connection
20 with the conduct covered by such charges as author-
21 ized by section 815 of title 10, United States Code
22 (article 15 of the Uniform Code of Military Justice).

23 (e) CONSTRUCTION WITH CHARGES ON OTHER OF-
24 FENSES.—Nothing in this section shall be construed to
25 alter or affect the preferral, disposition, or referral author-

1 ity of charges under chapter 47 of title 10, United States
2 Code (the Uniform Code of Military Justice), that allege
3 an offense for which the maximum punishment authorized
4 under that chapter includes confinement for one year or
5 less.

6 (f) POLICIES AND PROCEDURES.—

7 (1) IN GENERAL.—The Secretaries of the mili-
8 tary departments and the Secretary of Homeland
9 Security (with respect to the Coast Guard when it
10 is not operating as a service in the Navy) shall re-
11 vise policies and procedures as necessary to comply
12 with this section.

13 (2) UNIFORMITY.—The General Counsel of the
14 Department of Defense and the General Counsel of
15 the Department of Homeland Security shall jointly
16 review the policies and procedures revised under this
17 subsection in order to ensure that any lack of uni-
18 formity in policies and procedures, as so revised,
19 among the military departments and the Depart-
20 ment of Homeland Security does not render uncon-
21 stitutional any policy or procedure, as so revised.

22 (g) MANUAL FOR COURTS-MARTIAL.—The Secretary
23 of Defense shall recommend such changes to the Manual
24 for Courts-Martial as are necessary to ensure compliance
25 with this section.

1 **SEC. 3. MODIFICATION OF OFFICERS AUTHORIZED TO CON-**
 2 **VENE GENERAL AND SPECIAL COURTS-MAR-**
 3 **TIAL FOR CERTAIN OFFENSES UNDER UCMJ**
 4 **WITH AUTHORIZED MAXIMUM SENTENCE OF**
 5 **CONFINEMENT OF MORE THAN ONE YEAR.**

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

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

11 (2) by inserting after paragraph (7) the fol-
 12 lowing new paragraph (8):

13 “(8) with respect to offenses to which section
 14 2(a) of the Military Justice Improvement Act of
 15 2019 applies, the officers in the offices established
 16 pursuant to section 3(c) of that Act or officers in
 17 the grade of O–6 or higher who are assigned such
 18 responsibility by the Chief of Staff of the Army, the
 19 Chief of Naval Operations, the Chief of Staff of the
 20 Air Force, the Commandant of the Marine Corps, or
 21 the Commandant of the Coast Guard;”.

22 (b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
 23 MAND OF ACCUSED OR VICTIM.—Such section (article) is
 24 further amended by adding at the end the following new
 25 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)
 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 as of the effective date for this Act specified in sec-
12 tion 6.

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

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

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

1 **SEC. 5. MONITORING AND ASSESSMENT OF MODIFICATION**
 2 **OF AUTHORITIES BY DEFENSE ADVISORY**
 3 **COMMITTEE ON INVESTIGATION, PROSECU-**
 4 **TION, AND DEFENSE OF SEXUAL ASSAULT IN**
 5 **THE ARMED FORCES.**

6 Section 546(c) of the Carl Levin and Howard P.
 7 “Buck” McKeon National Defense Authorization Act for
 8 Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “on the investigation” and
 11 inserting “on the following:

12 “(A) The investigation”; and

13 (B) by adding at the end the following new
 14 subparagraph:

15 “(B) The implementation and efficacy of
 16 sections 2 through 4 of the Military Justice Im-
 17 provement Act of 2019 and the amendments
 18 made by such sections.”; and

19 (2) in paragraph (2), by striking “paragraph
 20 (1)” and inserting “paragraph (1)(A)”.

21 **SEC. 6. EFFECTIVE DATE AND APPLICABILITY.**

22 (a) **EFFECTIVE DATE AND APPLICABILITY.**—This
 23 Act and the amendments made by this Act shall take ef-
 24 fect 180 days after the date of the enactment of this Act,
 25 and shall apply with respect to any allegation of charges
 26 of an offense specified in subsection (a) of section 2, and

1 not excluded under subsection (c) of section 2, which of-
2 fense occurs on or after such effective date.

3 (b) REVISIONS OF POLICIES AND PROCEDURES.—

4 Any revision of policies and procedures required of the
5 military departments or the Department of Homeland Se-
6 curity as a result of this Act and the amendments made
7 by this Act shall be completed so as to come into effect
8 together with the coming into effect of this Act and the
9 amendments made by this Act in accordance with sub-
10 section (a).

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