

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 OFFENSES WITH**

5 **AUTHORIZED MAXIMUM SENTENCE OF CON-**

6 **FINEMENT OF MORE THAN ONE YEAR.**

7 (a) MODIFICATION OF AUTHORITY.—

8 (1) IN GENERAL.—

9 (A) MILITARY DEPARTMENTS.—With re-

10 spect to charges under chapter 47 of title 10,

1 United States Code (the Uniform Code of Mili-  
2 tary Justice), that allege an offense specified in  
3 paragraph (2) and not excluded under para-  
4 graph (3), the Secretary of Defense shall re-  
5 quire the Secretaries of the military depart-  
6 ments to provide for the determination under  
7 section 830(b) of such chapter (article 30(b) of  
8 the Uniform Code of Military Justice) on  
9 whether to try such charges by court-martial as  
10 provided in paragraph (4).

11 (B) HOMELAND SECURITY.—With respect  
12 to charges under chapter 47 of title 10, United  
13 States Code (the Uniform Code of Military Jus-  
14 tice), that allege an offense specified in para-  
15 graph (2) and not excluded under paragraph  
16 (3) against a member of the Coast Guard  
17 (when it is not operating as a service in the  
18 Navy), the Secretary of Homeland Security  
19 shall provide for the determination under sec-  
20 tion 830(b) of such chapter (article 30(b) of the  
21 Uniform Code of Military Justice) on whether  
22 to try such charges by court-martial as provided  
23 in paragraph (4).

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

1           (A) An offense under chapter 47 of title  
2           10, United States Code (the Uniform Code of  
3           Military Justice), that is triable by court-mar-  
4           tial under that chapter for which the maximum  
5           punishment authorized under that chapter in-  
6           cludes confinement for more than one year.

7           (B) A conspiracy to commit an offense  
8           specified in subparagraph (A) as punishable  
9           under section 881 of title 10, United States  
10          Code (article 81 of the Uniform Code of Mili-  
11          tary Justice).

12          (C) A solicitation to commit an offense  
13          specified in subparagraph (A) as punishable  
14          under section 882 of title 10, United States  
15          Code (article 82 of the Uniform Code of Mili-  
16          tary Justice).

17          (D) An attempt to commit an offense spec-  
18          ified in subparagraph (A) through (C) as pun-  
19          ishable under section 880 of title 10, United  
20          States Code (article 80 of the Uniform Code of  
21          Military Justice).

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

24                 (A) An offense under sections 883 through  
25                 917 of title 10, United States Code (articles 83

1 through 117 of the Uniform Code of Military  
2 Justice).

3 (B) An offense under section 933 or 934  
4 of title 10, United States Code (articles 133  
5 and 134 of the Uniform Code of Military Jus-  
6 tice).

7 (C) A conspiracy to commit an offense  
8 specified in subparagraph (A) or (B) as punish-  
9 able under section 881 of title 10, United  
10 States Code (article 81 of the Uniform Code of  
11 Military Justice).

12 (D) A solicitation to commit an offense  
13 specified in subparagraph (A) or (B) as punish-  
14 able under section 882 of title 10, United  
15 States Code (article 82 of the Uniform Code of  
16 Military Justice).

17 (E) An attempt to commit an offense spec-  
18 ified in subparagraph (A) through (D) as pun-  
19 ishable under section 880 of title 10, United  
20 States Code (article 80 of the Uniform Code of  
21 Military Justice).

22 (4) REQUIREMENTS AND LIMITATIONS.—The  
23 disposition of charges pursuant to paragraph (1)  
24 shall be subject to the following:

1           (A) The determination whether to try such  
2 charges by court-martial shall be made by a  
3 commissioned officer of the Armed Forces des-  
4 ignated in accordance with regulations pre-  
5 scribed for purposes of this subsection from  
6 among commissioned officers of the Armed  
7 Forces in grade O-6 or higher who—

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

12           (ii) have significant experience in  
13 trials by general or special court-martial;  
14 and

15           (iii) are outside the chain of command  
16 of the member subject to such charges.

17           (B) Upon a determination under subpara-  
18 graph (A) to try such charges by court-martial,  
19 the officer making that determination shall de-  
20 termine whether to try such charges by a gen-  
21 eral court-martial convened under section 822  
22 of title 10, United States Code (article 22 of  
23 the Uniform Code of Military Justice), or a spe-  
24 cial court-martial convened under section 823

1 of title 10, United States Code (article 23 of  
2 the Uniform Code of Military Justice).

3 (C) A determination under subparagraph  
4 (A) to try charges by court-martial shall include  
5 a determination to try all known offenses, in-  
6 cluding lesser included offenses.

7 (D) The determination to try such charges  
8 by court-martial under subparagraph (A), and  
9 by type of court-martial under subparagraph  
10 (B), shall be binding on any applicable con-  
11 vening authority for a trial by court-martial on  
12 such charges.

13 (E) The actions of an officer described in  
14 subparagraph (A) in determining under that  
15 subparagraph whether or not to try charges by  
16 court-martial shall be free of unlawful or unau-  
17 thorized influence or coercion.

18 (F) The determination under subpara-  
19 graph (A) not to proceed to trial of such  
20 charges by general or special court-martial shall  
21 not operate to terminate or otherwise alter the  
22 authority of commanding officers to refer such  
23 charges for trial by summary court-martial con-  
24 vened under section 824 of title 10, United  
25 States Code (article 24 of the Uniform Code of

1 Military Justice), or to impose non-judicial pun-  
2 ishment in connection with the conduct covered  
3 by such charges as authorized by section 815 of  
4 title 10, United States Code (article 15 of the  
5 Uniform Code of Military Justice).

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

15 (6) POLICIES AND PROCEDURES.—

16 (A) IN GENERAL.—The Secretaries of the  
17 military departments and the Secretary of  
18 Homeland Security (with respect to the Coast  
19 Guard when it is not operating as a service in  
20 the Navy) shall revise policies and procedures  
21 as necessary to comply with this subsection.

22 (B) UNIFORMITY.—The General Counsel  
23 of the Department of Defense and the General  
24 Counsel of the Department of Homeland Secu-  
25 rity shall jointly review the policies and proce-



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

3           “(8) the officers in the offices established pur-  
4           suant to section 552A(c) of the National Defense  
5           Authorization Act for Fiscal Year 2014 or officers in  
6           the grade of O-6 or higher who are assigned such  
7           responsibility by the Chief of Staff of the Army, the  
8           Chief of Naval Operations, the Chief of Staff of the  
9           Air Force, the Commandant of the Marine Corps, or  
10          the Commandant of the Coast Guard, but only with  
11          respect to offenses to which section 552(a)(1) of the  
12          National Defense Authorization Act for Fiscal Year  
13          2014 applies;”.

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

18          “(c) An officer specified in subsection (a)(8) may not  
19          convene a court-martial under this section if the person  
20          is in the chain of command of the accused or the victim.”.

21          (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-  
22          TIAL.—

23                 (1) OFFICES REQUIRED.—Each Chief of Staff  
24                 of the Armed Forces or Commandant specified in  
25                 paragraph (8) of section 822(a) of title 10, United

1 States Code (article 22(a) of the Uniform Code of  
2 Military Justice), as amended by subsection (a),  
3 shall establish an office to do the following:

4 (A) To convene general and special courts-  
5 martial under sections 822 and 823 of title 10,  
6 United States Code (articles 22 and 23 of the  
7 Uniform Code of Military Justice), pursuant to  
8 paragraph (8) of section 822(a) of title 10,  
9 United States Code (article 22(a) of the Uni-  
10 form Code of Military Justice), as so amended,  
11 with respect to offenses to which section  
12 552(a)(1) applies.

13 (B) To detail under section 825 of title 10,  
14 United States Code (article 25 of the Uniform  
15 Code of Military Justice), members of courts-  
16 martial convened as described in subparagraph  
17 (A).

18 (2) PERSONNEL.—The personnel of each office  
19 established under paragraph (1) shall consist of such  
20 members of the Armed Forces and civilian personnel  
21 of the Department of Defense, or such members of  
22 the Coast Guard or civilian personnel of the Depart-  
23 ment of Homeland Security, as may be detailed or  
24 assigned to the office by the Chief of Staff or Com-  
25 mandant concerned. The members and personnel so

1 detailed or assigned, as the case may be, shall be de-  
2 tailed or assigned from personnel billets in existence  
3 on the date of the enactment of this Act.

4 **SEC. 552B. DISCHARGE USING OTHERWISE AUTHORIZED**  
5 **PERSONNEL AND RESOURCES.**

6 (a) IN GENERAL.—The Secretaries of the military  
7 departments and the Secretary of Homeland Security  
8 (with respect to the Coast Guard when it is not operating  
9 as a service in the Navy) shall carry out sections 552 and  
10 552A (and the amendments made by section 552A) using  
11 personnel, funds, and resources otherwise authorized by  
12 law.

13 (b) NO AUTHORIZATION OF ADDITIONAL PER-  
14 SONNEL OR RESOURCES.—Sections 552 and 552A (and  
15 the amendments made by section 552A) shall not be con-  
16 strued as authorizations for personnel, personnel billets,  
17 or funds for the discharge of the requirements in such sec-  
18 tions.

19 **SEC. 552C. MONITORING AND ASSESSMENT OF MODIFICA-**  
20 **TION OF AUTHORITIES ON COURTS-MARTIAL**  
21 **BY INDEPENDENT PANEL ON REVIEW AND**  
22 **ASSESSMENT OF PROCEEDINGS UNDER THE**  
23 **UNIFORM CODE OF MILITARY JUSTICE.**

24 Paragraph (2) of section 576(d) of the National De-  
25 fense Authorization Act for Fiscal Year 2013 (Public Law

1 112–239; 126 Stat. 1762), as amended by section 546 of  
2 this Act, is further amended—

3 (1) by redesignating subparagraph (M) as sub-  
4 paragraph (N); and

5 (2) by inserting after subparagraph (L) the fol-  
6 lowing new subparagraph (M):

7 “(J) Monitor and assess the implementation  
8 and efficacy of sections 552 through 552C of the  
9 National Defense Authorization Act for Fiscal Year  
10 2014, and the amendments made by such sections.”.