

AMENDMENT NO. _____ Calendar No. _____

Purpose: To reform procedures for determinations to proceed to trial by court-martial for certain offenses under the Uniform Code of Military Justice.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 2943

To authorize appropriations for fiscal year 2017 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 At the end of subtitle D of title V, add the following:

2 **PART III—UNIFORM CODE OF MILITARY JUSTICE**

3 **REFORM**

4 **SEC. 556. SHORT TITLE.**

5 This part may be cited as the “Military Justice Im-
6 provement Act of 2016”.

1 **SEC. 557. MODIFICATION OF AUTHORITY TO DETERMINE**
2 **TO PROCEED TO TRIAL BY COURT-MARTIAL**
3 **ON CHARGES ON CERTAIN OFFENSES WITH**
4 **AUTHORIZED MAXIMUM SENTENCE OF CON-**
5 **FINEMENT OF MORE THAN ONE YEAR.**

6 (a) MODIFICATION OF AUTHORITY.—

7 (1) IN GENERAL.—

8 (A) MILITARY DEPARTMENTS.—With re-
9 spect to charges under chapter 47 of title 10,
10 United States Code (the Uniform Code of Mili-
11 tary Justice), that allege an offense specified in
12 paragraph (2) and not excluded under para-
13 graph (3), the Secretary of Defense shall re-
14 quire the Secretaries of the military depart-
15 ments to provide for the determination under
16 section 830(b) of such chapter (article 30(b) of
17 the Uniform Code of Military Justice) on
18 whether to try such charges by court-martial as
19 provided in paragraph (4).

20 (B) HOMELAND SECURITY.—With respect
21 to charges under chapter 47 of title 10, United
22 States Code (the Uniform Code of Military Jus-
23 tice), that allege an offense specified in para-
24 graph (2) and not excluded under paragraph
25 (3) against a member of the Coast Guard
26 (when it is not operating as a service in the

1 Navy), the Secretary of Homeland Security
2 shall provide for the determination under sec-
3 tion 830(b) of such chapter (article 30(b) of the
4 Uniform Code of Military Justice) on whether
5 to try such charges by court-martial as provided
6 in paragraph (4).

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

9 (A) An offense under chapter 47 of title
10 10, United States Code (the Uniform Code of
11 Military Justice), that is triable by court-mar-
12 tial under that chapter for which the maximum
13 punishment authorized under that chapter in-
14 cludes confinement for more than one year.

15 (B) An offense of retaliation for reporting
16 a crime under section 893 of title 10, United
17 States Code (article 93 of the Uniform Code of
18 Military Justice), as amended by section 559B
19 of this Act, regardless of the maximum punish-
20 ment authorized under that chapter for such of-
21 fense.

22 (C) An offense under section 907a of title
23 10, United States Code (article 107a of the
24 Uniform Code of Military Justice), as added by
25 section 559C of this Act, regardless of the max-

1 imum punishment authorized under that chap-
2 ter for such offense.

3 (D) A conspiracy to commit an offense
4 specified in subparagraph (A) through (C) as
5 punishable under section 881 of title 10, United
6 States Code (article 81 of the Uniform Code of
7 Military Justice).

8 (E) A solicitation to commit an offense
9 specified in subparagraph (A) through (C) as
10 punishable under section 882 of title 10, United
11 States Code (article 82 of the Uniform Code of
12 Military Justice).

13 (F) An attempt to commit an offense spec-
14 ified in subparagraphs (A) through (E) as pun-
15 ishable under section 880 of title 10, United
16 States Code (article 80 of the Uniform Code of
17 Military Justice).

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

20 (A) An offense under sections 883 through
21 917 of title 10, United States Code (articles 83
22 through 117 of the Uniform Code of Military
23 Justice).

24 (B) An offense under section 933 or 934
25 of title 10, United States Code (articles 133

1 and 134 of the Uniform Code of Military Jus-
2 tice).

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

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

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

18 (4) REQUIREMENTS AND LIMITATIONS.—The
19 disposition of charges pursuant to paragraph (1)
20 shall be subject to the following:

21 (A) The determination whether to try such
22 charges by court-martial shall be made by a
23 commissioned officer of the Armed Forces des-
24 ignated in accordance with regulations pre-
25 scribed for purposes of this subsection from

1 among commissioned officers of the Armed
2 Forces in grade O-6 or higher who—

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

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

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

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

22 (C) A determination under subparagraph
23 (A) to try charges by court-martial shall include
24 a determination to try all known offenses, in-
25 cluding lesser included offenses.

1 (D) The determination to try such charges
2 by court-martial under subparagraph (A), and
3 by type of court-martial under subparagraph
4 (B), shall be binding on any applicable con-
5 vening authority for a trial by court-martial on
6 such charges.

7 (E) The actions of an officer described in
8 subparagraph (A) in determining under that
9 subparagraph whether or not to try charges by
10 court-martial shall be free of unlawful or unau-
11 thorized influence or coercion.

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

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

10 (6) POLICIES AND PROCEDURES.—

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

17 (B) UNIFORMITY.—The General Counsel
18 of the Department of Defense and the General
19 Counsel of the Department of Homeland Secu-
20 rity shall jointly review the policies and proce-
21 dures revised under this paragraph in order to
22 ensure that any lack of uniformity in policies
23 and procedures, as so revised, among the mili-
24 tary departments and the Department of

1 Homeland Security does not render unconstitu-
2 tional any policy or procedure, as so revised.

3 (7) **MANUAL FOR COURTS-MARTIAL.**—The Sec-
4 retary of Defense shall recommend such changes to
5 the Manual for Courts-Martial as are necessary to
6 ensure compliance with this subsection.

7 (b) **EFFECTIVE DATE AND APPLICABILITY.**—Sub-
8 section (a), and the revisions required by that subsection,
9 shall take effect on the date that is 180 days after the
10 date of the enactment of this Act, and shall apply with
11 respect to charges preferred under section 830 of title 10,
12 United States Code (article 30 of the Uniform Code of
13 Military Justice), on or after such effective date.

14 **SEC. 558. MODIFICATION OF OFFICERS AUTHORIZED TO**
15 **CONVENE GENERAL AND SPECIAL COURTS-**
16 **MARTIAL.**

17 (a) **IN GENERAL.**—Subsection (a) of section 822 of
18 title 10, United States Code (article 22 of the Uniform
19 Code of Military Justice), is amended—

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

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

24 “(8) the officers in the offices established pur-
25 suant to section 558(c) of the National Defense Au-

1 thorization Act for Fiscal Year 2017 or officers in
2 the grade of O–6 or higher who are assigned such
3 responsibility by the Chief of Staff of the Army, the
4 Chief of Naval Operations, the Chief of Staff of the
5 Air Force, the Commandant of the Marine Corps, or
6 the Commandant of the Coast Guard, but only with
7 respect to offenses to which section 557(a)(1) of the
8 National Defense Authorization Act for Fiscal Year
9 2017 applies;”.

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

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

17 (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-
18 TIAL.—

19 (1) OFFICES REQUIRED.—Each Chief of Staff
20 of the Armed Forces or Commandant specified in
21 paragraph (8) of section 822(a) of title 10, United
22 States Code (article 22(a) of the Uniform Code of
23 Military Justice), as amended by subsection (a),
24 shall establish an office to do the following:

1 (A) To convene general and special courts-
2 martial under sections 822 and 823 of title 10,
3 United States Code (articles 22 and 23 of the
4 Uniform Code of Military Justice), pursuant to
5 paragraph (8) of section 822(a) of title 10,
6 United States Code (article 22(a) of the Uni-
7 form Code of Military Justice), as so amended,
8 with respect to offenses to which section
9 557(a)(1) applies.

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

15 (2) PERSONNEL.—The personnel of each office
16 established under paragraph (1) shall consist of such
17 members of the Armed Forces and civilian personnel
18 of the Department of Defense, or such members of
19 the Coast Guard or civilian personnel of the Depart-
20 ment of Homeland Security, as may be detailed or
21 assigned to the office by the Chief of Staff or Com-
22 mandant concerned. The members and personnel so
23 detailed or assigned, as the case may be, shall be de-
24 tailed or assigned from personnel billets in existence
25 on the date of the enactment of this Act.

1 **SEC. 559. DISCHARGE USING OTHERWISE AUTHORIZED**
2 **PERSONNEL AND RESOURCES.**

3 (a) IN GENERAL.—The Secretaries of the military
4 departments and the Secretary of Homeland Security
5 (with respect to the Coast Guard when it is not operating
6 as a service in the Navy) shall carry out sections 557 and
7 558 using personnel, funds, and resources otherwise au-
8 thorized by law.

9 (b) NO AUTHORIZATION OF ADDITIONAL PER-
10 SONNEL OR RESOURCES.—Sections 557 and 558 shall not
11 be construed as authorizations for personnel, personnel
12 billets, or funds for the discharge of the requirements in
13 such sections.

14 **SEC. 559A. MONITORING AND ASSESSMENT OF MODIFICA-**
15 **TION OF AUTHORITIES ON COURTS-MARTIAL**
16 **BY INDEPENDENT PANEL ON REVIEW AND**
17 **ASSESSMENT OF PROCEEDINGS UNDER THE**
18 **UNIFORM CODE OF MILITARY JUSTICE.**

19 Section 576(d)(2) of the National Defense Authoriza-
20 tion Act for Fiscal Year 2013 (Public Law 112–239; 126
21 Stat. 1762) is amended—

22 (1) by redesignating subparagraph (J) as sub-
23 paragraph (K); and

24 (2) by inserting after subparagraph (I) the fol-
25 lowing new subparagraph (J):

1 “(J) Monitor and assess the implementation
2 and efficacy of sections 557 through 559 of the Na-
3 tional Defense Authorization Act for Fiscal Year
4 2017.”.

5 **SEC. 559B. EXPLICIT CODIFICATION OF RETALIATION FOR**
6 **REPORTING A CRIME AS AN OFFENSE UNDER**
7 **THE UNIFORM CODE OF MILITARY JUSTICE.**

8 (a) IN GENERAL.—Section 893 of title 10, United
9 States Code (article 93 of the Uniform Code of Military
10 Justice), is amended—

11 (1) by inserting “(a)” before “Any person”;

12 (2) in subsection (a), as so designated, by in-
13 serting “, or retaliating against any person subject
14 to his orders for reporting a criminal offense,” after
15 “any person subject to his orders”; and

16 (3) by adding at the end the following new sub-
17 section:

18 “(b) This section (article) is the sole section of this
19 chapter under which the offense of retaliating against any
20 person subject to a person’s orders for reporting a crimi-
21 nal offense as described in subsection (a) is punishable.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) SECTION (ARTICLE) HEADING.—The head-
24 ing of such section (article) is amended to read as
25 follows:

1 **“§ 893. Art. 93. Cruelty and maltreatment; retaliation**
2 **for reporting a crime”.**

3 (2) TABLE OF SECTIONS (ARTICLES).—The
4 table of sections at the beginning of subchapter X of
5 chapter 47 of such title is amended by striking the
6 item relating to section 893 (article 93) and insert-
7 ing the following new item:

“893. Art. 93. Cruelty and maltreatment; retaliation for reporting a crime.”.

8 (c) REPEAL OF SUPERSEDED PROHIBITION.—Sec-
9 tion 1709 of the National Defense Authorization Act for
10 Fiscal Year 2014 (Public Law 113–66; 127 Stat. 962; 10
11 U.S.C. 113 note) is repealed.

12 **SEC. 559C. ESTABLISHMENT OF OBSTRUCTION OF JUSTICE**
13 **AS A SEPARATE OFFENCE UNDER THE UNI-**
14 **FORM CODE OF MILITARY JUSTICE.**

15 (a) PUNITIVE ARTICLE.—Subchapter X of chapter
16 47 of title 10, United States Code (the Uniform Code of
17 Military Justice), is amended by inserting after section
18 907 (article 107) the following new section (article):

19 **“§ 907a. Art. 107a. Obstruction of justice**

20 “(a) Any person subject to this chapter who wrong-
21 fully does a certain act with the intent to influence, im-
22 pede, or otherwise obstruct the due administration of jus-
23 tice shall be punished as a court-martial may direct, ex-
24 cept that the maximum punishment authorized for such
25 offense may not exceed dishonorable discharge, forfeiture

1 of all pay and allowances, and confinement for not more
2 than five years.

3 “(b) This section (article) is the sole section of this
4 chapter under which an offense described in subsection (a)
5 is punishable.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of subchapter X of chapter 47 of such
8 title, as amended by section 559B(b)(2) of this Act, is fur-
9 ther amended by inserting after the item relating to sec-
10 tion 907 (article 107) the following new item:

“907a. Art. 107a. Obstruction of justice.”.