

Kristen Gillibrand

AMENDMENT NO. _____ Calendar No. _____

Purpose: To reform the disposition of charges and convening of courts-martial for certain offenses under the Uniform Code of Military Justice.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. 4049

To authorize appropriations for fiscal year 2021 for military activities of the Department of Defense, for military personnel of the Department of Defense, and for other purposes.

By Gillibrand

To: _____

S. 4049

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Viz:

1 At the end of subtitle D of title V, add the following:

2 **PART III—DISPOSITION OF CHARGES AND CON-**

3 **VENING OF COURTS-MARTIAL FOR CERTAIN**

4 **UCMJ OFFENSES**

5 **SEC. 539. SHORT TITLE.**

6 This part may be cited as the “Military Justice Im-

7 provement Act of 2020”.

1 **SEC. 539A. IMPROVEMENT OF DETERMINATIONS ON DIS-**
2 **POSITION OF CHARGES FOR CERTAIN OF-**
3 **FENSES UNDER UCMJ WITH AUTHORIZED**
4 **MAXIMUM SENTENCE OF CONFINEMENT OF**
5 **MORE THAN ONE YEAR.**

6 (a) IMPROVEMENT OF DETERMINATIONS.—

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

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

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

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

24 (2) HOMELAND SECURITY.—With respect to
25 charges under chapter 47 of title 10, United States
26 Code (the Uniform Code of Military Justice), that

1 allege an offense specified in subsection (b) and not
2 excluded under subsection (c) against a member of
3 the Coast Guard (when it is not operating as a serv-
4 ice in the Navy), the Secretary of Homeland Secu-
5 rity shall provide as described in subsection (d) for
6 the determinations as follows:

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

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

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

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

18 (1) An offense under chapter 47 of title 10,
19 United States Code (the Uniform Code of Military
20 Justice), for which the maximum punishment au-
21 thorized under that chapter includes confinement for
22 more than one year.

23 (2) A conspiracy to commit an offense specified
24 in paragraph (1) as punishable under section 881 of

1 title 10, United States Code (article 81 of the Uni-
2 form Code of Military Justice).

3 (3) A solicitation to commit an offense specified
4 in paragraph (1) as punishable under section 882 of
5 title 10, United States Code (article 82 of the Uni-
6 form Code of Military Justice).

7 (4) An attempt to commit an offense specified
8 in paragraph (1) as punishable under section 880 of
9 title 10, United States Code (article 80 of the Uni-
10 form Code of Military Justice).

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

13 (1) An offense under sections 883 through 917
14 of title 10, United States Code (articles 83 through
15 117 of the Uniform Code of Military Justice), but
16 not an offense under section 893a or 917a of such
17 title (articles 93a and 117a of the Uniform Code of
18 Military Justice) or the offense of child pornog-
19 raphy, negligent homicide, indecent conduct, or pan-
20 dering and prostitution as punishable under the gen-
21 eral punitive article in 934 of such title (article 134
22 of the Uniform Code of Military Justice).

23 (2) An offense under section 922a, 923, or
24 923a of title 10, United States Code (articles 122a,

1 123, and 123a of the Uniform Code of Military Jus-
2 tice).

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

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

10 (5) A solicitation to commit an offense specified
11 in paragraphs (1) through (3) as punishable under
12 section 882 of title 10, United States Code (article
13 82 of the Uniform Code of Military Justice).

14 (6) An attempt to commit an offense specified
15 in paragraphs (1) through (3) as punishable under
16 section 880 of title 10, United States Code (article
17 80 of the Uniform Code of Military Justice).

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

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

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

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

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

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

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

21 (3) A determination under paragraph (1) to
22 prefer charges or refer charges to a court-martial for
23 trial, as applicable, shall cover all known offenses,
24 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 paragraph (2), shall be
5 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. 539B. MODIFICATION OF OFFICERS AUTHORIZED TO**
2 **CONVENE GENERAL AND SPECIAL COURTS-**
3 **MARTIAL FOR CERTAIN OFFENSES UNDER**
4 **UCMJ WITH AUTHORIZED MAXIMUM SEN-**
5 **TENCE OF CONFINEMENT OF MORE THAN**
6 **ONE YEAR.**

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

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

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

14 “(8) with respect to offenses to which section
15 539A(a) of the Military Justice Improvement Act of
16 2020 applies, the officers in the offices established
17 pursuant to section 539B(c) of that Act or officers
18 in the grade of O–6 or higher who are assigned such
19 responsibility by the Chief of Staff of the Army, the
20 Chief of Naval Operations, the Chief of Staff of the
21 Air Force, the Commandant of the Marine Corps, or
22 the Commandant of the Coast Guard;”.

23 (b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
24 MAND OF ACCUSED OR VICTIM.—Such section (article) is
25 further amended by adding at the end the following new
26 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
20 539A(a) 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 part specified in sec-
12 tion 539E.

13 **SEC. 539C. DISCHARGE USING OTHERWISE AUTHORIZED**
14 **PERSONNEL 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 539A
19 and 539B using personnel, funds, and resources otherwise
20 authorized by law.

21 (b) NO AUTHORIZATION OF ADDITIONAL PER-
22 SONNEL OR RESOURCES.—Sections 539A and 539B shall
23 not be construed as authorizations for personnel, per-
24 sonnel billets, or funds for the discharge of the require-
25 ments in such sections.

1 **SEC. 539D. MONITORING AND ASSESSMENT OF MODIFICA-**
2 **TION OF AUTHORITIES BY DEFENSE ADVI-**
3 **SORY COMMITTEE ON INVESTIGATION, PROS-**
4 **ECUTION, AND DEFENSE OF SEXUAL AS-**
5 **SAULT IN 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 539A through 539C of the Military
17 Justice Improvement Act of 2020 and the
18 amendments made by such sections.”; and

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

21 **SEC. 539E. EFFECTIVE DATE AND APPLICABILITY.**

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

1 539A, and not excluded under subsection (c) of section
2 539A, which offense 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 part and the amendments made
7 by this part shall be completed so as to come into effect
8 together with the coming into effect of this part and the
9 amendments made by this part in accordance with sub-
10 section (a).