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.


S. 4049

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

Viz:

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

2 PART III—DISPOSITION OF CHARGES AND CONVENING OF COURTS-MARTIAL FOR CERTAIN UCMJ OFFENSES

3 SEC. 539. SHORT TITLE.

4 This part may be cited as the “Military Justice Improvement Act of 2020”.

GILLIBRAND
SEC. 539A. IMPROVEMENT OF DETERMINATIONS ON DISPOSITION OF CHARGES FOR CERTAIN OFFENSES UNDER UCMJ WITH AUTHORIZED MAXIMUM SENTENCE OF CONFINEMENT OF MORE THAN ONE YEAR.

(a) IMPROVEMENT OF DETERMINATIONS.—

(1) MILITARY DEPARTMENTS.—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), the Secretary of Defense shall require the Secretaries of the military departments to provide as described in subsection (d) for the determinations as follows:

(A) Determinations under section 830 of such chapter (article 30 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.

(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 serv-
ice in the Navy), the Secretary of Homeland Secu-
ry 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 au-
thorized under that chapter includes confinement for
more than one year.

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

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

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

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

(1) An offense under sections 883 through 917 of title 10, United States Code (articles 83 through 117 of the Uniform Code of Military Justice), but not an offense under section 893a or 917a of such title (articles 93a and 117a of the Uniform Code of Military Justice) or the offense of child pornography, negligent homicide, indecent conduct, or pandering and prostitution as punishable under the general punitive article in 934 of such title (article 134 of the Uniform Code of Military Justice).

(2) An offense under section 922a, 923, or 923a of title 10, United States Code (articles 122a,
123, and 123a of the Uniform Code of Military Justice).

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

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

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

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

(d) REQUIREMENTS AND LIMITATIONS.—The disposition of charges covered by subsection (a) shall be subject to the following:

(1) The determination whether to prefer such charges or refer such charges to a court-martial for trial, as applicable, shall be made by a commissioned officer of the Armed Forces designated in accordance with regulations prescribed for purposes of this
subsection from among commissioned officers of the
Armed Forces in grade O–6 or higher who—

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

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

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

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

(3) A determination under paragraph (1) to
prefer charges or refer charges to a court-martial for
trial, as applicable, shall cover all known offenses,
including lesser included offenses.
(4) The determination to prefer charges or refer charges to a court-martial for trial, as applicable, under paragraph (1), and the type of court-martial to which to refer under paragraph (2), shall be binding on any applicable convening authority for the referral of such charges.

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

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

(c) CONSTRUCTION WITH CHARGES ON OTHER OFFENSES.—Nothing in this section shall be construed to alter or affect the preferral, disposition, or referral author-
ity of charges under chapter 47 of title 10, United States
Code (the Uniform Code of Military Justice), that allege
an offense for which the maximum punishment authorized
under that chapter includes confinement for one year or
less.

(f) POLICIES AND PROCEDURES.—

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

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

(g) MANUAL FOR COURTS-MARTIAL.—The Secretary
of Defense shall recommend such changes to the Manual
for Courts-Martial as are necessary to ensure compliance
with this section.
SEC. 539B. MODIFICATION OF OFFICERS AUTHORIZED TO
CONVENE GENERAL AND SPECIAL COURTS-
MARTIAL FOR CERTAIN OFFENSES UNDER
UCMJ WITH AUTHORIZED MAXIMUM SENT-
ENCE OF CONFINEMENT OF MORE THAN
ONE YEAR.

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

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

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

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

(b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
MAND OF ACCUSED OR VICTIM.—Such section (article) is
further amended by adding at the end the following new
subsection:
"(c) An officer specified in subsection (a)(8) may not convene a court-martial under this section if the officer is in the chain of command of the accused or the victim."

(c) OFFICES OF CHIEFS OF STAFF ON COURTS-MARTIAL.—

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

(A) To convene general and special courts-martial under sections 822 and 823 of title 10, United States Code (articles 22 and 23 of the Uniform Code of Military Justice), pursuant to paragraph (8) of section 822(a) of title 10, United States Code (article 22(a) of the Uniform Code of Military Justice), as so amended, with respect to offenses to which section 539A(a) applies.

(B) To detail under section 825 of title 10, United States Code (article 25 of the Uniform Code of Military Justice), members of courts-martial convened as described in subparagraph (A).
(2) PERSONNEL.—The personnel of each office established under paragraph (1) shall consist of such members of the Armed Forces and civilian personnel of the Department of Defense, or such members of the Coast Guard or civilian personnel of the Department of Homeland Security, as may be detailed or assigned to the office by the Chief of Staff or Commandant concerned. The members and personnel so detailed or assigned, as the case may be, shall be detailed or assigned from personnel billets in existence as of the effective date for this part specified in section 539E.

SEC. 539C. DISCHARGE USING OTHERWISE AUTHORIZED PERSONNEL AND RESOURCES.

(a) IN GENERAL.—The Secretaries of the military departments and the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) shall carry out sections 539A and 539B using personnel, funds, and resources otherwise authorized by law.

(b) NO AUTHORIZATION OF ADDITIONAL PERSONNEL OR RESOURCES.—Sections 539A and 539B shall not be construed as authorizations for personnel, personnel billets, or funds for the discharge of the requirements in such sections.
SEC. 539D. MONITORING AND ASSESSMENT OF MODIFICATION OF AUTHORITIES BY DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

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

(1) in paragraph (1)—

(A) by striking "on the investigation" and inserting "on the following:

"(A) The investigation"; and

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

"(B) The implementation and efficacy of sections 539A through 539C of the Military Justice Improvement Act of 2020 and the amendments made by such sections."; and

(2) in paragraph (2), by striking "paragraph (1)" and inserting "paragraph (1)(A)".

SEC. 539E. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE AND APPLICABILITY.—This part and the amendments made by this part shall take effect 180 days after the date of the enactment of this Act, and shall apply with respect to any allegation of charges of an offense specified in subsection (a) of section
539A, and not excluded under subsection (e) of section 539A, which offense occurs on or after such effective date.

(b) Revisions of Policies and Procedures.—Any revision of policies and procedures required of the military departments or the Department of Homeland Security as a result of this part and the amendments made by this part shall be completed so as to come into effect together with the coming into effect of this part and the amendments made by this part in accordance with subsection (a).