

Senate NDAA Amendment: Article 32 Reform Act

Sponsor: Senator Barbara Boxer

Date introduced: filed on November 5, 2013

Co-sponsors: 11 - Senators Graham (R-SC), Shaheen (D-NH), Blunt (R-MO), McCaskill (D-MO), Gillibrand (D-NY), Baucus (D-MT), Blumenthal (D-CT), Hirono (D-HI), Ayotte (R-NH), Collins (R-ME), and McCain (R-AZ).

Overview of bill:

Section 2:

1. Subsection (a)(1): Amends Article 32, UCMJ, section (a)(1) to require that no charge or specification be referred to a general court-martial for trial until a judge advocate conducts a preliminary hearing.
 - a. The judge advocate conducting the preliminary hearing must be of a grade equal to or greater than the trial counsel and, if the accused is represented by military counsel, the defense counsel.
 - b. The preliminary hearing is limited to determining whether there is probable cause to believe an offense has been committed and whether the accused committed it.
 - c. After conducting the preliminary hearing, the judge advocate conducting the preliminary hearing shall prepare a report that includes:
 - i. Determination of courts-martial jurisdiction over offense and accused;
 - ii. Determination of probable cause;
 - iii. Consideration of the form of charges;
 - iv. Recommendation as to the disposition which should be made of the case.
 - d. At the preliminary hearing, the accused may cross examine the witnesses that are available; and may offer evidence and call witnesses relevant to the probable cause determination. An objection to evidence on the ground that it was unlawfully acquired may be noted as part of the record.
 - e. Limits the presentation of evidence and examination of witnesses to the question of probable cause.
 - f. Must be recorded by a court reporter or a suitable recording device' and a copy of the recording and transcript shall be provided upon request to any party, including the victim of the offense and counsel of such victim.
2. Subsection (a)(2): Changes title of Article 32 "Investigation" to Article 32 "Preliminary hearing."
3. Subsection (b): Provides conforming amendments to Article 34(b)(2), UCMJ, and Article 38(b)(1), UCMJ, to replace "investigation" with "preliminary inquiry."
4. Subsection (c): Amendments made by this section are effective one year after the date of enactment of this Act.

Impact:

1. Re-names Article 32 Investigation as Article 32 Preliminary hearing.
2. Limits the preliminary hearing to determining whether probable cause exists to believe an offense has been committed and that the accused committed the offense.
3. Requires the preliminary hearing officer to be a judge advocate of equal or higher grade as the prosecutor and defense counsel.
4. The accused may cross-examine witnesses who are *available*.
5. The alleged victim of an offense may not be required to testify at the preliminary hearing. If a victim declines to testify, the victim shall be deemed *not available* for purposes of the preliminary hearing.