

Questions:

1. Many of the excluded offenses that remain with the Commander carry more than a year of prison (e.g., aiding the enemy, spying, espionage, negligent homicide, possession, distribution and creation of child pornography, kidnapping). Who has authority to refer these offenses to general court-martial? Under the proposed legislation, Article 22 is amended and removes the convening authority for all commanders except for combatant commanders and those appointed by the President. Thus, most commanders would not have the authority to convene general courts-martial for these serious offenses.
2. The amendment includes attempts and conspiracies to commit the crime in the offenses reserved to the O-6 judge advocate disposition authority but does not with respect to 'excluded' offenses. Was this omission intentional? If so, attempts and conspiracies to commit any offense reserved to the commander (e.g., missing movement, drug distribution or use, kidnapping) could not be prosecuted.
3. What is the process for cases where both 'systems of disposition' intersect? For example (1) an accused who kidnaps his victim and then commits rape - the former is the responsibility of the commander (Article 134) and the latter is reserved to the new O-6 disposition authority; (2) an AWOL and a murder charge; (3) larceny and disrespect or disobedience offense; (4) an intoxicated member grabs the buttocks of his victim against her will then drives her home and while under the influence wrecks and kills her. The commander has authority to adjudicate the negligent homicide case but not the sexual contact offense?
Note: Explicit jurisdictional language contained in the Amendment could constitute grounds for challenge if a single disposition authority takes single responsibility.
4. Refusal of non-judicial punishment or summary court-martial. When the O-6 judge advocate disposition authority says no court-martial, and the case goes back to the commander for disposition, the accused has the right to refuse non-judicial punishment or summary court-martial and demand a trial by court-martial. Under the legislation, the initial decision by the O-6 convening authority is binding. So, will the service member simply go unpunished? Or will the

case go back to the O-6 for reconsideration? Since the legislation states that the initial O-6 decision is binding, it seems that the case could not then go back to the O-6 for a new disposition.

5. Is the Article 34 pretrial advice letter prior to referral to general court-martial still required for the Gillibrand offenses under the purview of the O-6 judge advocate?
6. Who has authority to enter pretrial agreements with respect to Gillibrand offenses that are within the O-6 judge advocate's authority? This includes PTAs where accused may be willing to plead to some offenses but not others, yet the ministerial GCMCA or SPCMCA has a binding referral decision from the O-6 judge advocate.
7. Is there any criminal jurisdiction in the United States that bifurcates responsibility to try cases in this manner and has it proven successful in addressing the perceived or actual failures being addressed?
8. What analysis was conducted in drafting the provision that requires implementation of the bill to remain cost-neutral in implementation? How many O-6 judge advocates will be needed by each Service? How many with the enumerated qualifications are available (not currently filling required subject matter expert billets, i.e. trial judge, appellate judge, Chief of the Government or Defense Appellate Divisions etc...)? How many will be needed to staff the new offices created by the Chiefs of Services? How many additional staff to support the new office of the Chief (centralized or dispersed) will be required to manage worldwide load of criminal investigations and the disposition thereof?