

MURKOWSKI AMENDMENT SA 2141

TEXT OF AMENDMENT

SA 2141. [Ms. MURKOWSKI](#) submitted an amendment intended to be proposed by her to the bill [S. 1197](#), to authorize appropriations for fiscal year 2014 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; which was ordered to lie on the table; as follows:

On page 155 [\[this is the section on eligibility for an SVC\]](#), strike line 15 and insert the following:

ual assault.

“(5)(A) An individual specified in subparagraph (B) who is the victim of an offense described in paragraph (2) that is committed by a member of armed forces or cadet or midshipman may be provided assistance by a Special Victims’ Counsel under this subsection as if such individual were a member of the armed forces. In this subsection, any reference to a member in connection with the provision of such assistance shall be deemed to be a reference to such individual.

“(B) An individual specified in this subparagraph is an individual as follows:

“(i) A cadet at the United States Military Academy.

“(ii) A midshipman at the Naval Academy.

“(iii) A cadet at the Air Force Academy.”.

At the end of part I of subtitle E of title V [\[adds a new section to the “sexual assault prevention and response” portion of bill – “related military justice matters starts” in Part II with Sect 551\]](#), add the following:

SEC. 547. CONTINUOUS AVAILABILITY OF SEXUAL ASSAULT FORENSIC EXAMINERS AND SEXUAL ASSAULT NURSE EXAMINERS-ADULT/ADOLESCENT FOR CADETS AND MIDSHIPMEN WHO ARE VICTIMS OF SEXUAL ASSAULT AT THE MILITARY SERVICE ACADEMIES.

(a) Continuous Availability.—Each Secretary concerned shall ensure that the services specified in subsection (b) are available on a continuous basis for cadets or midshipmen, as the case may be, who are the victim of a sexual assault at the military service academy under the jurisdiction of such Secretary.

(b) Covered Services.—The services specified in this subsection are the following:

(1) Services of Sexual Assault Forensic Examiners (SAFEs).

(2) Services of Sexual Assault Nurse Examiners-Adult/Adolescent (SANEs).

(c) Secretary Concerned Defined.—In this section, the term “Secretary concerned” means the following:

(1) The Secretary of the Army with respect to the United States Military Academy.

(2) The Secretary of the Navy with respect to the Naval Academy.

(3) The Secretary of the Air Force with respect to the Air Force Academy.

MURKOWSKI AMENDMENT SA 2143

TEXT OF AMENDMENT

SA 2143. [Ms. MURKOWSKI](#) submitted an amendment intended to be proposed by her to the bill [S. 1197](#), to authorize appropriations for fiscal year 2014 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; which was ordered to lie on the table; as follows:

At the end of part I of subtitle E of title V, add the following:

SEC. 547. REPORTS ON MEDICAL CARE AND FORENSIC COLLECTION ACTIVITIES AVAILABLE FOR VICTIMS OF MILITARY SEXUAL TRAUMA AT THE MILITARY SERVICE ACADEMIES.

(a) Reports Required.—Not later than 90 days after the date of the enactment of this Act, each Secretary concerned shall submit to Congress a report describing the following:

(1) The emergency and other medical care to include mental healthcare currently available for victims of military sexual trauma at the military service academy under the jurisdiction of such Secretary.

(2) The forensic collection activities currently undertaken in connection with military sexual trauma at such military service academy.

(b) Secretary Concerned Defined.—In this section, the term “Secretary concerned” means the following:

(1) The Secretary of the Army with respect to the United States Military Academy.

(2) The Secretary of the Navy with respect to the Naval Academy.

(3) The Secretary of the Air Force with respect to the Air Force Academy.

GILLIBRAND AMENDMENT SA 2099

TEXT OF AMENDMENT

SA 2099. [Mrs. GILLIBRAND](#) (for herself, [Mrs. BOXER](#), [Ms. COLLINS](#), [Mr. GRASSLEY](#), [Mr. BLUMENTHAL](#), [Mr. PAUL](#), [Mrs. SHAHEEN](#), [Mr. KIRK](#), [Mr. SCHUMER](#), [Mr. JOHANNES](#), [Ms. HIRONO](#), [Mr. BEGICH](#), [Mr. COONS](#), [Mr. MARKEY](#), [Mr. JOHNSON](#) of South Dakota, [Ms. BALDWIN](#), [Ms. WARREN](#), [Mr. UDALL](#) of New Mexico, [Mr. SCHATZ](#), [Mr. HEINRICH](#), [Mr. CARDIN](#), [Mr. CRUZ](#), [Mr. WYDEN](#), [Mr. DONNELLY](#), [Ms. MURKOWSKI](#), [Mr. CASEY](#), [Mr. BOOKER](#), and [Mr. FRANKEN](#)) submitted an amendment intended to be proposed by her to the bill [S. 1197](#), to authorize appropriations for fiscal year 2014 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; which was ordered to lie on the table; as follows:

Strike section 552 and insert the following:

SEC. 552. MODIFICATION OF AUTHORITY TO DETERMINE TO PROCEED TO TRIAL BY COURT-MARTIAL ON CHARGES ON CERTAIN OFFENSES WITH AUTHORIZED MAXIMUM SENTENCE OF CONFINEMENT OF MORE THAN ONE YEAR.

(a) Modification of Authority.—

(1) IN GENERAL.—

(A) **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 paragraph (2) and not excluded under paragraph (3), the Secretary of Defense shall require the Secretaries of the military departments to provide for the determination under section 830(b) of such chapter (article 30(b) of the Uniform Code of Military Justice) on whether to try such charges by court-martial as provided in paragraph (4).

(B) **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 paragraph (2) and not excluded under paragraph (3) against a member of the Coast Guard (when it is not operating as a service in the Navy), the Secretary of Homeland Security shall provide for the determination under section 830(b) of such chapter (article 30(b) of the Uniform Code of Military Justice) on whether to try such charges by court-martial as provided in paragraph (4).

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

(A) An offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that is triable by court-martial under that chapter for which the maximum punishment authorized under that chapter includes confinement for more than one year.

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

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

(D) An attempt to commit an offense specified in subparagraph (A) through (C) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

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

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

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

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

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

(E) An attempt to commit an offense specified in subparagraph (A) through (D) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

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

(A) The determination whether to try such charges by court-martial 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—

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

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

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

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(B) Upon a determination under subparagraph (A) to try such charges by court-martial, the officer making that determination shall determine whether to try such charges 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 convened under section 823 of title 10, United States Code (article 23 of the Uniform Code of Military Justice).

(C) A determination under subparagraph (A) to try charges by court-martial shall include a determination to try all known offenses, including lesser included offenses.

(D) The determination to try such charges by court-martial under subparagraph (A), and by type of court-martial under subparagraph (B), shall be binding on any applicable convening authority for a trial by court-martial on such charges.

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

(F) The determination under subparagraph (A) not to proceed to trial of such charges by general or special court-martial shall not operate to terminate or otherwise alter the authority of commanding officers to refer such 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).

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

(6) POLICIES AND PROCEDURES.—

(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 revise policies and procedures as necessary to comply with this subsection.

(B) 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 paragraph in order to ensure that any lack of uniformity in policies and procedures, as so revised, among the military departments and the Department of Homeland Security does not render unconstitutional any policy or procedure, as so revised.

(7) **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 subsection.

(b) **Effective Date and Applicability.**—Subsection (a), and the revisions required by that subsection, shall take effect on the date that is 180 days after the date of the enactment of this Act, and shall apply with respect to charges preferred under section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice), on or after such effective date.

SEC. 552A. MODIFICATION OF OFFICERS AUTHORIZED TO CONVENE GENERAL AND SPECIAL COURTS-MARTIAL.

(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 following new paragraph (8):

“(8) the officers in the offices established pursuant to section 552A(c) of the National Defense Authorization Act for Fiscal Year 2014 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, but only with respect to offenses to which section 552(a)(1) of the National Defense Authorization Act for Fiscal Year 2014 applies;”.

(b) **No Exercise by Officers in Chain of Command 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 person 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 552(a)(1) 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 on the date of the enactment of this Act.

SEC. 552B. 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

552 and 552A (and the amendments made by section 552A) using personnel, funds, and resources otherwise authorized by law.

(b) No Authorization of Additional Personnel or Resources.—Sections 552 and 552A (and the amendments made by section 552A) shall not be construed as authorizations for personnel, personnel billets, or funds for the discharge of the requirements in such sections.

SEC. 552C. MONITORING AND ASSESSMENT OF MODIFICATION OF AUTHORITIES ON COURTS-MARTIAL BY INDEPENDENT PANEL ON REVIEW AND ASSESSMENT OF PROCEEDINGS UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

Paragraph (2) of section 576(d) of the National Defense Authorization Act for Fiscal Year 2013 ([Public Law 112-239](#); 126 Stat. 1762), as amended by section 546 of this Act, is further amended—

(1) by redesignating subparagraph (M) as subparagraph (N); and

(2) by inserting after subparagraph (L) the following new subparagraph (M):

“(J) Monitor and assess the implementation and efficacy of sections 552 through 552C of the National Defense Authorization Act for Fiscal Year 2014, and the amendments made by such sections.”.

BOXER AMENDMENT SA 2081

TEXT OF AMENDMENT

SA 2081. [Mrs. BOXER](#) (for herself, [Mr. GRAHAM](#), [Mrs. SHAHEEN](#), [Mr. BLUNT](#), [Mrs. MCCASKILL](#), [Mrs. GILLIBRAND](#), [Mr. BAUCUS](#), [Mr. BLUMENTHAL](#), [Mr. MCCAIN](#), [Mr. TESTER](#), [Mr. KAINE](#), [Mr. COONS](#), [Mr. WYDEN](#), [Mr. PORTMAN](#), and [Mr. CARDIN](#)) submitted an amendment intended to be proposed by her to the bill [S. 1197](#), to authorize appropriations for fiscal year 2014 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; which was ordered to lie on the table; as follows:

At the end of part III of subtitle E of title V, add the following:

SEC. 566. PRELIMINARY HEARINGS ON ALLEGED OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) Preliminary Hearings.—

(1) **IN GENERAL.**—Section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 832. Art. 32. Preliminary hearing

“(a)(1) No charge or specification may be referred to a general court-martial for trial until a judge advocate conducts a preliminary hearing.

“(2) In exceptional circumstances, an officer other than a judge advocate may conduct a preliminary hearing if it is determined that detailing a judge advocate to conduct the preliminary hearing is not supportable.

“(3) Wherever supportable, the judge advocate or officer conducting a preliminary hearing shall have a grade equal to or higher than the grade of any military counsel who, at the time the judge advocate or officer is detailed, has been assigned to represent a party at the preliminary hearing.

“(4) The preliminary hearing shall be limited to the purpose of determining whether there is probable cause to believe an offense has been committed and whether the accused committed it.

“(5) After conducting the preliminary hearing, the judge advocate or officer conducting the preliminary hearing shall prepare a report that includes the following:

“(A) A determination as to court-martial jurisdiction over the offense and the accused.

“(B) A determination as to probable cause.

“(C) A consideration of the form of charges.

“(D) A recommendation as to the disposition which should be made of the case.

“(b)(1) The accused shall be advised of the charges against the accused and of the accused’s right to be represented by counsel at the preliminary hearing. The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

“(2) At the preliminary hearing, the accused may cross-examine adverse witnesses if they are available. The accused may offer evidence and call witnesses relevant to the probable cause determination.

“(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing.

“(4) The presentation of evidence and examination of witnesses at a preliminary hearing shall be limited to the question of probable cause.

“(c) A preliminary hearing under this section shall be recorded by a suitable recording device, and a copy of the recording shall be provided to any party upon request. The victim shall have access to the recording, upon request, in accordance with regulations prescribed by the Secretary concerned for purposes of this section.

“(d) The requirements of this section are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter VI of chapter 47 of such title (the Uniform Code of Military Justice) is amended by striking the item relating to section 832 (article 32) and inserting the following new item:

“832. Art. 32. Preliminary hearing.”.

(b) Conforming Amendments.—

(1) Section 834(a)(2) of such title (article 34(a)(2) of the Uniform Code of Military Justice) is amended by striking “the report of investigation” and inserting “the report of the preliminary hearing”.

(2) Section 838(b)(1) of such title (article 38(b)(1) of the Uniform Code of Military Justice) is amended by striking “an investigation” and inserting “a preliminary hearing”.

(c) Effective Date.—The amendments made by this section shall take effect on the date that is one year after the date of the enactment of this Act, and shall apply with respect to offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that occur on or after such effective date.