

116TH CONGRESS
1ST SESSION

S. 1495

To amend title 10, United States Code, to enhance the prevention of sexual assault and related offenses in the Armed Forces, to enhance protections of victims of such offenses, to improve the investigation and prosecution of such offenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2019

Ms. MCSALLY (for herself, Mr. TILLIS, Mr. BLUNT, Ms. ERNST, Mr. SCOTT of Florida, and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to enhance the prevention of sexual assault and related offenses in the Armed Forces, to enhance protections of victims of such offenses, to improve the investigation and prosecution of such offenses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Combating Military Sexual Assault Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PREVENTION AND TRAINING ON SEXUAL ASSAULT IN THE ARMED FORCES

- Sec. 101. Training for commanders in the Armed Forces on their role in all stages of military justice in connection with sexual assault.
- Sec. 102. Training for Sexual Assault Initial Disposition Authorities on exercise of disposition authority for sexual assault and collateral offenses.
- Sec. 103. Three-year extension of Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.
- Sec. 104. Military department grants on research on sexual assault prevention and reduction efforts at institutions of higher education.
- Sec. 105. Report on expansion of the Close Airman Support team approach of the Air Force to the other Armed Forces.

TITLE II—SUPPORT OF VICTIMS OF SEXUAL ASSAULT IN THE ARMED FORCES

- Sec. 201. Expansion of responsibilities of commanders for victims of sexual assault committed by another member of the Armed Forces.
- Sec. 202. Availability of Special Victims' Counsel and Special Victim Prosecutors at military installations.
- Sec. 203. Preservation of recourse to Restricted Report on sexual assault for victims of sexual assault being investigated following certain victim or third-party communications.
- Sec. 204. Treatment of information in Catch a Serial Offender Program for certain purposes.
- Sec. 205. Report on expansion of Air Force safe to report policy across the Armed Forces.

TITLE III—INVESTIGATION OF SEXUAL ASSAULT IN THE ARMED FORCES AND RELATED MATTERS

- Sec. 301. Expansion of pre-referral matters reviewable by military judges and military magistrates in the interest of efficiency in military justice.
- Sec. 302. Increase in number of digital forensic examiners for the military criminal investigation organizations.
- Sec. 303. Pilot programs on defense investigators in the military justice system.
- Sec. 304. Report on mechanisms to enhance the integration and synchronization of activities of Special Victim Investigation and Prosecution personnel with activities of military criminal investigation organizations.

TITLE IV—PROSECUTION MATTERS

- Sec. 401. Punitive article in the Uniform Code of Military Justice on sexual harassment affecting the duties, work, or career of a member of the Armed Forces.
- Sec. 402. Non-binding guidelines on sentences of confinement for convictions of offenses under the Uniform Code of Military Justice.

TITLE V—OTHER MATTERS

Sec. 501. Survey of members of the Armed Forces on their experiences with military investigations and military justice.

Sec. 502. Annual report on military protective orders.

Sec. 503. Privacy Act exclusion for courts-martial to allow for public access to dockets, filings, and court records.

Sec. 504. Report on standardization among the military departments in collection and presentation of information on matters within the military justice system.

1 **TITLE I—PREVENTION AND** 2 **TRAINING ON SEXUAL AS-** 3 **SAULT IN THE ARMED** 4 **FORCES**

5 **SEC. 101. TRAINING FOR COMMANDERS IN THE ARMED** 6 **FORCES ON THEIR ROLE IN ALL STAGES OF** 7 **MILITARY JUSTICE IN CONNECTION WITH** 8 **SEXUAL ASSAULT.**

9 (a) IN GENERAL.—The training provided com-
10 manders in the Armed Forces shall include comprehensive
11 training on the role of commanders in all stages of mili-
12 tary justice in connection with sexual assaults by members
13 of the Armed Forces against other members of the Armed
14 Forces.

15 (b) ELEMENTS TO BE COVERED.—The training pro-
16 vided pursuant to subsection (a) shall include training on
17 the following:

18 (1) The role of commanders in each stage of
19 the military justice process in connection with sexual
20 assault committed by a member of the Armed

1 Forces against another member, including investiga-
2 tion and prosecution.

3 (2) The role of commanders in assuring that
4 victims in sexual assault described in paragraph (1)
5 are informed of, and have the opportunity to obtain,
6 assistance available for victims of sexual assault by
7 law.

8 (3) The role of commanders in assuring that
9 victims in sexual assault described in paragraph (1)
10 are afforded the due process rights and protections
11 available to victims by law.

12 (4) The role of commanders in preventing retal-
13 iation against victims, their family members, wit-
14 nesses, first responders, and bystanders for their
15 complaints, statements, testimony, and status in
16 connection with sexual assault described in para-
17 graph (1), including the role of commanders in en-
18 suring that subordinates in the command are aware
19 of their responsibilities in preventing such retalia-
20 tion.

21 (5) The role of commanders in establishing and
22 maintaining a healthy command climate in connec-
23 tion with reporting on sexual assault described in
24 paragraph (1) and in the response of the com-
25 mander, subordinates in the command, and other

1 personnel in the command to such sexual assault,
2 such reporting, and the military justice process in
3 connection with such sexual assault.

4 (6) Any other matters on the role of com-
5 manders in connection with sexual assault described
6 in paragraph (1) that the Secretary of Defense con-
7 sider appropriate for purposes of this section.

8 (c) INCORPORATION OF BEST PRACTICES.—

9 (1) IN GENERAL.—The training provided pur-
10 suant to subsection (a) shall incorporate best prac-
11 tices on all matters covered by the training.

12 (2) IDENTIFICATION OF BEST PRACTICES.—The
13 Secretaries of the military departments shall, acting
14 through the training and doctrine commands of the
15 Armed Forces, undertake from time to time surveys
16 and other reviews of the matters covered by the
17 training provided pursuant to subsection (a) in order
18 to identify and incorporate into such training the
19 most current practicable best practices on such mat-
20 ters.

21 (d) UNIFORMITY.—The Secretary of Defense shall
22 ensure that the training provided pursuant to subsection
23 (a) is, to the extent practicable, uniform across the Armed
24 Forces.

1 **SEC. 102. TRAINING FOR SEXUAL ASSAULT INITIAL DIS-**
2 **POSITION AUTHORITIES ON EXERCISE OF**
3 **DISPOSITION AUTHORITY FOR SEXUAL AS-**
4 **SAULT AND COLLATERAL OFFENSES.**

5 (a) IN GENERAL.—The training for Sexual Assault
6 Initial Disposition Authorities (SAIDAs) on the exercise
7 of disposition authority under chapter 47, United States
8 Code (the Uniform Code of Military Justice), with respect
9 to cases for which disposition authority is withheld to such
10 Authorities by the April 20, 2012, memorandum of the
11 Secretary of Defense, or any successor memorandum, shall
12 include comprehensive training on the exercise by such
13 Authorities of such authority with respect to such cases
14 in order to enhance the capabilities of such Authorities
15 in the exercise of such authority and thereby promote con-
16 fidence and trust in the military justice process with re-
17 spect to such cases.

18 (b) MEMORANDUM OF SECRETARY OF DEFENSE.—
19 The April 20, 2012, memorandum of the Secretary of De-
20 fense referred to in subsection (a) is the memorandum of
21 the Secretary of Defense entitled “Withholding Initial Dis-
22 position Authority Under the Uniform Code of Military
23 Justice in Certain Sexual Assault Cases” and dated April
24 20, 2012.

1 **SEC. 103. THREE-YEAR EXTENSION OF DEFENSE ADVISORY**
2 **COMMITTEE ON INVESTIGATION, PROSECU-**
3 **TION, AND DEFENSE OF SEXUAL ASSAULT IN**
4 **THE ARMED FORCES.**

5 (a) EXTENSION.—Subsection (f)(1) of section 546 of
6 the Carl Levin and Howard P. “Buck” McKeon National
7 Defense Authorization Act for Fiscal Year 2015 (Public
8 Law 113–291; 10 U.S.C. 1561 note) is amended by strik-
9 ing “5 years” and inserting “8 years”.

10 (b) ANNUAL REPORT.—

11 (1) IN GENERAL.—Subsection (e) of such sec-
12 tion is amended by inserting “until the Advisory
13 Committee terminates under subsection (f)” after
14 “March 30 each year”.

15 (2) STATUTORY CONSTRUCTION.—The annual
16 report described in section 546(e) of such Act, as
17 amended by paragraph (1), shall be required to be
18 submitted during the period specified in such sec-
19 tion, as so amended, notwithstanding section
20 1061(d)(1) of the National Defense Authorization
21 Act for Fiscal Year 2017 (Public Law 114–328; 10
22 U.S.C. 111 note) or any other provision of law.

1 **SEC. 104. MILITARY DEPARTMENT GRANTS ON RESEARCH**
2 **ON SEXUAL ASSAULT PREVENTION AND RE-**
3 **DUCTION EFFORTS AT INSTITUTIONS OF**
4 **HIGHER EDUCATION.**

5 (a) IN GENERAL.—Each Secretary of a military de-
6 partment shall, using amounts described in subsection (f),
7 make one or more grants to appropriate non-Federal pub-
8 lic or private entities for research on sexual assault pre-
9 vention and reduction efforts at institutions of higher edu-
10 cation for purposes of identifying best practices among
11 such efforts for dissemination to, and use at, the military
12 service academies and other institutions of higher edu-
13 cation in order to enhance prevention or reduction of inci-
14 dents of sexual assault among students of such institu-
15 tions.

16 (b) REQUIREMENTS AND LIMITATIONS.—

17 (1) COMPETITIVE AWARD.—Any grant awarded
18 pursuant to subsection (a) shall be awarded on a
19 competitive basis.

20 (2) AMOUNT OF GRANTS.—The aggregate
21 amounts of grants awarded by a Secretary pursuant
22 to subsection (a) in any fiscal year may not exceed
23 \$_____.

24 (c) USE OF GRANT AMOUNTS.—An entity awarded
25 a grant pursuant to subsection (a) shall use the grant

1 amount for research for purposes specified in that sub-
2 section.

3 (d) REPORT.—Each grant awarded pursuant to sub-
4 section (a) shall require the recipient to submit to the Sec-
5 retary of the military department concerned a report on
6 the results of the research undertaken by the recipient
7 using such grant.

8 (e) USE OF RESULTS.—

9 (1) SHARING OF RESULTS.—Each Secretary of
10 a military department shall share the results of re-
11 search undertaken through grants awarded by such
12 Secretary pursuant to subsection (a) with the other
13 Secretaries of the military departments. The purpose
14 of such sharing shall be for the Secretaries of the
15 military department to jointly determine best prac-
16 tices among sexual assault prevention and reduction
17 efforts at institutions of higher education.

18 (2) USE AT MILITARY SERVICE ACADEMIES.—
19 Each Secretary of a military department shall use
20 best practices identified pursuant to paragraph (1)
21 at the military service academy under the jurisdic-
22 tion of such Secretary, modified as such Secretary
23 considers appropriate for the unique circumstances
24 of such military service academy.

1 (3) FURTHER DISSEMINATION.—The Secre-
 2 taries of the military department shall jointly dis-
 3 seminate to institutions of higher education the fol-
 4 lowing:

5 (A) The best practices identified pursuant
 6 to paragraph (1).

7 (B) Such other information on sexual as-
 8 sault prevention and reduction efforts at insti-
 9 tutions of higher education as the Secretaries
 10 jointly consider appropriate in light of the re-
 11 search undertaken through grants awarded pur-
 12 suant to subsection (a).

13 (f) FUNDING.—Amounts for grants under this sec-
 14 tion in a fiscal year shall be derived from amounts author-
 15 ized to be appropriated for that fiscal year for military
 16 personnel.

17 **SEC. 105. REPORT ON EXPANSION OF THE CLOSE AIRMAN**
 18 **SUPPORT TEAM APPROACH OF THE AIR**
 19 **FORCE TO THE OTHER ARMED FORCES.**

20 (a) REPORT REQUIRED.—Not later than 180 days
 21 after the date of the enactment of this Act, the Secretaries
 22 of the military departments shall jointly submit to the
 23 Committees on Armed Services of the Senate and the
 24 House of Representatives a report setting forth an assess-
 25 ment of the Secretaries of the feasibility and advisability

1 of expanding the Close Airman Support (CAS) team ap-
2 proach of the Air Force to the other Armed Forces under
3 the jurisdiction of such Secretaries.

4 (b) CLOSE AIRMAN SUPPORT TEAM APPROACH.—
5 The Close Airman Support team approach of the Air
6 Force referred to in subsection (a) is an approach by
7 which personnel associated with an Air Force squadron,
8 and led by a senior enlisted member of the squadron, take
9 actions to improve relationships and communication
10 among members of the squadron in order to promote posi-
11 tive social behaviors among such members as a squadron,
12 including an embrace of proactive pursuit of needed assist-
13 ance.

14 (c) SCOPE OF REPORT.—If the Secretaries determine
15 that expansion of the Close Airman Support team ap-
16 proach to the other Armed Forces is feasible and advis-
17 able, the report under subsection (a) shall include a de-
18 scription of the manner in which the approach will be car-
19 ried out in the other Armed Forces, including the manner,
20 if any, in which the approach will be modified in the other
21 Armed Forces to take into account the unique cir-
22 cumstances of such Armed Forces.

1 **TITLE II—SUPPORT OF VICTIMS**
 2 **OF SEXUAL ASSAULT IN THE**
 3 **ARMED FORCES**

4 **SEC. 201. EXPANSION OF RESPONSIBILITIES OF COM-**
 5 **MANDERS FOR VICTIMS OF SEXUAL ASSAULT**
 6 **COMMITTED BY ANOTHER MEMBER OF THE**
 7 **ARMED FORCES.**

8 (a) NOTIFICATION OF VICTIMS OF EVENTS IN MILI-
 9 TARY JUSTICE PROCESS.—

10 (1) NOTIFICATION REQUIRED.—The com-
 11 mander of a member of the Armed Forces who is
 12 the alleged victim of sexual assault committed by an-
 13 other member of the Armed Forces shall provide no-
 14 tification to such alleged victim of every key or other
 15 significant event in the military justice process in
 16 connection with the investigation, prosecution, and
 17 confinement of such other member for sexual as-
 18 sault.

19 (2) DOCUMENTATION.—Each commander de-
 20 scribed in paragraph (1) shall create and maintain
 21 appropriate documentation on any notification pro-
 22 vided as described in that paragraph.

23 (b) DOCUMENTATION OF VICTIM'S PREFERENCE ON
 24 JURISDICTION IN PROSECUTION.—In the case of a mem-
 25 ber of the Armed Forces who is the alleged victim of sex-

1 ual assault committed by another member of the Armed
 2 Forces who is subject to prosecution for such offense both
 3 by court-martial under chapter 47 of title 10, United
 4 States Code (the Uniform Code of Military Justice), and
 5 by a civilian court under State law, the commander of such
 6 alleged victim shall create and maintain appropriate docu-
 7 mentation of the expressed preference, if any, of such al-
 8 leged victim for prosecution of such offense by court-mar-
 9 tial or by a civilian court as provided for by Rule 306(e)
 10 of the Rules for Court-Martial.

11 (c) REGULATIONS.—The Secretary of Defense shall
 12 prescribe in regulations the requirements applicable to
 13 each of the following:

- 14 (1) Notifications under subsection (a)(1).
- 15 (2) Documentation under subsection (a)(2).
- 16 (3) Documentation under subsection (b).

17 **SEC. 202. AVAILABILITY OF SPECIAL VICTIMS' COUNSEL**
 18 **AND SPECIAL VICTIM PROSECUTORS AT MILI-**
 19 **TARY INSTALLATIONS.**

20 (a) DEADLINE FOR AVAILABILITY.—

21 (1) IN GENERAL.—If an individual specified in
 22 paragraph (2) is not available at a military installa-
 23 tion for access by a member of the Armed Forces
 24 who requests access to such an individual, such an
 25 individual shall be made available at such installa-

1 tion for access by such member by not later than 48
2 hours after such request.

3 (2) INDIVIDUALS.—The individuals specified in
4 this paragraph are the following:

5 (A) Special Victims' Counsel (SVC).

6 (B) Special Victim Prosecutor (SVP).

7 (b) REPORT ON CIVILIAN SUPPORT OF SVCs.—Not
8 later than 180 days after the date of the enactment of
9 this Act, each Secretary of a military department shall
10 submit to the Committees on Armed Services of the Sen-
11 ate and the House of Representatives a report setting
12 forth the assessment of such Secretary of the feasibility
13 and advisability of establishing and maintaining at each
14 installation under the jurisdiction of such Secretary with
15 a Special Victims' Counsel one or more civilian positions
16 for the purpose of—

17 (1) providing support to such Special Victims'
18 Counsel; and

19 (2) ensuring continuity and the preservation of
20 institutional knowledge in transitions between the
21 service of individuals as Special Victims' Counsel at
22 such installation.

1 **SEC. 203. PRESERVATION OF RECOURSE TO RESTRICTED**
2 **REPORT ON SEXUAL ASSAULT FOR VICTIMS**
3 **OF SEXUAL ASSAULT BEING INVESTIGATED**
4 **FOLLOWING CERTAIN VICTIM OR THIRD-**
5 **PARTY COMMUNICATIONS.**

6 (a) IN GENERAL.—A member of the Armed Forces
7 who is the victim of a sexual assault that is or may be
8 investigated as a result of a communication described in
9 subsection (b) may elect to have the member's reporting
10 on such sexual assault be treated as a Restricted Report
11 without regard to the party initiating or receiving such
12 communication.

13 (b) COMMUNICATION.—A communication described
14 in this subsection is a communication on a sexual assault
15 as follows:

16 (1) By the member concerned to a member of
17 the Armed Forces in the chain of command of such
18 member, whether a commissioned officer or a non-
19 commissioned officer.

20 (2) By the member concerned to military law
21 enforcement personnel or personnel of a military
22 criminal investigation organization (MCIO).

23 (3) By any individual other than the member
24 concerned.

1 **SEC. 204. TREATMENT OF INFORMATION IN CATCH A SE-**
2 **RIAL OFFENDER PROGRAM FOR CERTAIN**
3 **PURPOSES.**

4 (a) EXCLUSION FROM FOIA.—Section 552 of title
5 5, United States Code (commonly referred to as the
6 “Freedom of Information Act”), shall not apply to any
7 report for purposes of the Catch a Serial Offender
8 (CATCH) Program.

9 (b) PRESERVATION OF RESTRICTED REPORT.—The
10 transmittal or receipt in connection with the Catch a Se-
11 rial Offender Program of a report on a sexual assault that
12 is treated as a Restricted Report shall not operate to ter-
13 minate its treatment or status as a Restricted Report.

14 **SEC. 205. REPORT ON EXPANSION OF AIR FORCE SAFE TO**
15 **REPORT POLICY ACROSS THE ARMED**
16 **FORCES.**

17 (a) REPORT.—Not later than 180 days after the date
18 of the enactment of this Act, the Secretary of Defense
19 shall, in consultation with the Secretaries of the military
20 departments and the Secretary of Homeland Security,
21 submit to the Committees on Armed Services of the Sen-
22 ate and the House of Representatives a report setting
23 forth an assessment of the feasibility and advisability of
24 expanding the applicability of the safe to report policy de-
25 scribed in subsection (b) so that the policy applies across
26 the Armed Forces.

1 (b) SAFE TO REPORT POLICY.—The safe to report
 2 policy described in this subsection is the policy, currently
 3 applicable in the Air Force alone, under which a member
 4 of the Armed Forces who is the alleged victim of sexual
 5 assault committed by another member of the Armed
 6 Forces, but who may have committed minor collateral mis-
 7 conduct at or about the time of such sexual assault, or
 8 whose minor collateral misconduct at or about such time
 9 is discovered only as a result of the investigation into such
 10 sexual assault, may report such sexual assault to proper
 11 authorities without fear or receipt of discipline in connec-
 12 tion with such minor collateral misconduct.

13 **TITLE III—INVESTIGATION OF**
 14 **SEXUAL ASSAULT IN THE**
 15 **ARMED FORCES AND RE-**
 16 **LATED MATTERS**

17 **SEC. 301. EXPANSION OF PRE-REFERRAL MATTERS RE-**
 18 **VIEWABLE BY MILITARY JUDGES AND MILI-**
 19 **TARY MAGISTRATES IN THE INTEREST OF EF-**
 20 **FICIENCY IN MILITARY JUSTICE.**

21 (a) IN GENERAL.—Subsection (a) of section 830a of
 22 title 10, United States Code (article 30a of the Uniform
 23 Code of Military Justice), is amended by striking para-
 24 graphs (1) and (2) and inserting the following new para-
 25 graphs:

1 “(1) The President shall prescribe regulations for
2 matters relating to proceedings conducted before referral
3 of charges and specifications to court-martial for trial, in-
4 cluding the following:

5 “(A) Pre-referral investigative subpoenas.

6 “(B) Pre-referral warrants or orders for elec-
7 tronic communications.

8 “(C) Pre-referral matters referred by an appel-
9 late court.

10 “(D) Pre-referral matters under subsection (c)
11 or (e) of section 806b of this title (article 6b).

12 “(E) Pre-referral matters relating to the fol-
13 lowing:

14 “(i) Pre-trial confinement of an accused.

15 “(ii) The mental capacity or responsibility
16 of an accused.

17 “(iii) A request for an individual military
18 counsel.

19 “(2) In addition to the matters specified in paragraph
20 (1), the regulations prescribed under that paragraph
21 shall—

22 “(A) set forth the matters that a military judge
23 may rule upon in such proceedings;

24 “(B) include procedures for the review of such
25 rulings;

1 “(C) include appropriate limitations to ensure
 2 that proceedings under this section extend only to
 3 matters that would be subject to consideration by a
 4 military judge in a general or special court-martial;

5 “(D) provide such limitations on the relief that
 6 may be ordered under this section as the President
 7 considers appropriate; and

8 “(E) provide for treatment of such other pre-re-
 9 ferral matters as the President may prescribe.”.

10 (b) CONFORMING AND CLERICAL AMENDMENTS.—

11 (1) HEADING AMENDMENT.—The heading of
 12 such section is amended to read as follows:

13 **“§ 830a. Art. 30a. Proceedings conducted before refer-**
 14 **ral”.**

15 (2) CLERICAL AMENDMENT.—The table of sec-
 16 tions at the beginning of subchapter VI of chapter
 17 47 of title 10, United States Code (the Uniform
 18 Code of Military Justice), is amended by striking the
 19 item relating to section 830a (article 30a) and in-
 20 serting the following new item:

“830a. 30a. Proceedings conducted before referral.”.

21 **SEC. 302. INCREASE IN NUMBER OF DIGITAL FORENSIC EX-**
 22 **AMINERS FOR THE MILITARY CRIMINAL IN-**
 23 **VESTIGATION ORGANIZATIONS.**

24 (a) IN GENERAL.—Each Secretary of a military de-
 25 partment shall take appropriate actions to increase the

1 number of digital forensic examiners in each military
2 criminal investigation organization (MCIO) under the ju-
3 risdiction of such Secretary by not fewer than 10 from
4 the authorized number of such examiners for such organi-
5 zation as of September 30, 2019.

6 (b) MILITARY CRIMINAL INVESTIGATION ORGANIZA-
7 TIONS.—For purposes of this section, the military criminal
8 investigation organizations are the following:

9 (1) The Army Criminal Investigation Com-
10 mand.

11 (2) The Naval Criminal Investigative Service.

12 (3) The Air Force Office of Special Investiga-
13 tions.

14 (4) The Marine Corps Criminal Investigation
15 Division.

16 (c) FUNDING.—Funds for additional digital forensic
17 examiners as required by subsection (a) for fiscal year
18 2020, including for compensation, initial training, and
19 equipment, shall be derived from amounts authorized to
20 be appropriated for that fiscal year for the Armed Force
21 concerned for operation and maintenance.

22 **SEC. 303. PILOT PROGRAMS ON DEFENSE INVESTIGATORS**
23 **IN THE MILITARY JUSTICE SYSTEM.**

24 (a) IN GENERAL.—Each Secretary of a military de-
25 partment shall carry out a pilot program on defense inves-

1 tigators within the military justice system under the juris-
2 diction of such Secretary in order to do the following:

3 (1) Determine whether the presence of defense
4 investigators within such military justice system
5 will—

6 (A) make such military justice system
7 more effective in determining the truth; and

8 (B) make such military justice system
9 more fair and efficient.

10 (2) Otherwise assess the feasibility and advis-
11 ability of defense investigators as an element of such
12 military justice system.

13 (b) ELEMENTS.—

14 (1) MODEL OF SIMILAR CIVILIAN CRIMINAL
15 JUSTICE SYSTEMS.—Defense investigators under
16 each pilot program under subsection (a) shall consist
17 of personnel, and participate in the military justice
18 system concerned, in a manner similar to that of de-
19 fense investigators in civilian criminal justice sys-
20 tems that are similar to the military justice systems
21 of the military departments.

22 (2) INTERVIEW OF VICTIM.—A defense investi-
23 gator may question a victim under a pilot program
24 only upon a request made through the Special Vic-

1 tims' Counsel or other counsel of the victim, or trial
2 counsel if the victim does not have such counsel.

3 (3) UNIFORMITY ACROSS MILITARY JUSTICE
4 SYSTEMS.—The Secretary of Defense shall ensure
5 that the personnel and activities of defense inves-
6 tigators under the pilot programs are, to the extent
7 practicable, uniform across the military justice sys-
8 tems of the military departments.

9 (c) REPORT.—

10 (1) IN GENERAL.—Not later than three years
11 after the date of the enactment of this Act, the Sec-
12 retary of Defense shall, in consultation with the Sec-
13 retaries of the military departments, submit to the
14 Committees on Armed Services of the Senate and
15 the House of Representatives a report on the pilot
16 programs under subsection (a).

17 (2) ELEMENTS.—The report required by para-
18 graph (1) shall include the following:

19 (A) A description of each pilot program,
20 including the personnel and activities of defense
21 investigators under such pilot program.

22 (B) An assessment of the feasibility and
23 advisability of establishing and maintaining de-
24 fense investigators as an element of the military
25 justice systems of the military departments.

(C) If the assessment under subparagraph (B) is that the establishment and maintenance of defense investigators as an element of the military justice systems of the military departments is feasible and advisable, such recommendations for legislative and administrative action as the Secretary of Defense considers appropriate to establish and maintain defense investigators as an element of the military justice systems.

(D) Any other matters the Secretary of Defense considers appropriate.

SEC. 304. REPORT ON MECHANISMS TO ENHANCE THE INTEGRATION AND SYNCHRONIZATION OF ACTIVITIES OF SPECIAL VICTIM INVESTIGATION AND PROSECUTION PERSONNEL WITH ACTIVITIES OF MILITARY CRIMINAL INVESTIGATION ORGANIZATIONS.

Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretaries of the military departments, submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth proposals for various mechanisms to enhance the integration and synchronization of activities of Special Vic-

1 tim Investigation and Prosecution (SVIP) personnel with
 2 activities of military criminal investigation organizations
 3 (MCIOs) in investigations in which both such personnel
 4 are or may be involved. If the proposed mechanisms re-
 5 quire legislative or administration action for implementa-
 6 tion, the report shall set forth such recommendations for
 7 such action as the Secretary of Defense considers appro-
 8 priate.

9 **TITLE IV—PROSECUTION** 10 **MATTERS**

11 **SEC. 401. PUNITIVE ARTICLE IN THE UNIFORM CODE OF** 12 **MILITARY JUSTICE ON SEXUAL HARASSMENT** 13 **AFFECTING THE DUTIES, WORK, OR CAREER** 14 **OF A MEMBER OF THE ARMED FORCES.**

15 (a) IN GENERAL.—Subchapter X of chapter 47 of
 16 title 10, United States Code (the Uniform Code of Military
 17 Justice), is amended by inserting after section 920c (arti-
 18 cle 120c) the following new section (article):

19 **“§ 920d. Art. 120d. Sexual harassment affecting the** 20 **duties, work, or career of a member of** 21 **the armed forces**

22 “(a) IN GENERAL.—Any person subject to this chap-
 23 ter who, under any condition specified in subsection (b),
 24 commits sexual harassment of a member of an armed
 25 force shall be punished as a court-martial may direct.

1 “(b) CONDITIONS SPECIFIED.—The conditions re-
2 ferred to in subsection (a) are any of the following:

3 “(1) The accused, implicitly or explicitly, com-
4 municates to the member that submission by the
5 member to the harassment is necessary—

6 “(A) to prevent adverse effects on the as-
7 signment, advancement, duties, or working con-
8 ditions of the member; or

9 “(B) to assure positive effects on the as-
10 signment, advancement, duties, or working con-
11 ditions of the member.

12 “(2) The accused, because of any response (by
13 submission, rejection, or otherwise) of the member
14 to the harassment, takes any action to affect, posi-
15 tively or negatively, the assignment, advancement,
16 duties, or working conditions of the member.

17 “(3) The purpose of the harassment is to create
18 an intimidating, hostile, or offensive work environ-
19 ment for the member or the harassment is carried
20 out in a manner that would cause a reasonable per-
21 son to perceive that the work environment is intimi-
22 dating, hostile, or offensive.

23 “(4) The purpose of the harassment is to inter-
24 fere with the duties or work performance of the
25 member or the harassment is carried out in a man-

1 ner that would interfere with the duties or work per-
 2 formance of a reasonable person.

3 “(c) CONDONATION BY SUPERIOR.—Any person sub-
 4 ject to this chapter who—

5 “(1) has a command or supervisory responsi-
 6 bility for a member of an armed force; and

7 “(2) condones or permits to occur any violation
 8 of subsection (a) with respect to the member,
 9 shall be punished as a court-martial may direct.

10 “(d) MILITARY CONNECTION.—Sexual harassment
 11 under subsection (a) and condonation under subsection (c)
 12 are offenses—

13 “(1) if committed in any circumstance with a
 14 connection to the military status of the member in-
 15 volved; and

16 “(2) whether or not the conduct takes place
 17 during official duty hours or at an official duty sta-
 18 tion or place of work.

19 “(e) SEXUAL HARASSMENT DEFINED.—In this sec-
 20 tion (article), the term ‘sexual harassment’ means, with
 21 respect to a member of an armed force, any unwelcome—

22 “(1) sexual advance;

23 “(2) request for sexual favors;

24 “(3) comment of a sexual nature; or

25 “(4) gesture of a sexual nature.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 at the beginning of subchapter X of chapter 47 of title
 3 10, United States Code (the Uniform Code of Military
 4 Justice), is amended by inserting after the item relating
 5 to section 920c (article 120c) the following new item:

“920d. 120d. Sexual harassment affecting the duties, work, or career of a member of the armed forces.”.

6 **SEC. 402. NON-BINDING GUIDELINES ON SENTENCES OF**
 7 **CONFINEMENT FOR CONVICTIONS OF OF-**
 8 **FENSES UNDER THE UNIFORM CODE OF MILI-**
 9 **TARY JUSTICE.**

10 (a) IN GENERAL.—The Military Justice Review
 11 Panel shall establish and from time to time revise guide-
 12 lines on the following:

13 (1) The range of sentences of confinement ap-
 14 propriate for imposition upon conviction for each of-
 15 fense specified in subchapter X of chapter 47 of title
 16 10, United States Code (the Uniform Code of Mili-
 17 tary Justice), for which confinement is an authorized
 18 sentence.

19 (2) The parameters and criteria to be taken
 20 into account in imposing a sentence of confinement
 21 upon conviction for each such offense.

22 (b) CONSIDERATIONS.—In establishing and revising
 23 guidelines pursuant to this section, the Military Justice
 24 Review Panel shall take into consideration data on the ad-

1 ministration of justice under the military justice system,
 2 including sentencing data collected as described in section
 3 946(f)(2) of title 10, United States Code (article 146(f)(2)
 4 of the Uniform Code of Military Justice), as amended by
 5 subsection (d).

6 (c) NON-BINDING NATURE OF GUIDELINES.—The
 7 guidelines established pursuant to this section shall not
 8 be binding.

9 (d) CONFORMING AMENDMENT.—Section 946(f)(2)
 10 of title 10, United States Code (article 146(f)(2) of the
 11 Uniform Code of Military Justice), is amended by insert-
 12 ing “and periodically thereafter,” after “During fiscal year
 13 2020,”.

14 (e) MILITARY JUSTICE REVIEW PANEL DEFINED.—
 15 In this section, the term “Military Justice Review Panel”
 16 means the panel established pursuant to section 946 of
 17 title 10, United States Code (article 146 of the Uniform
 18 Code of Military Justice).

19 **TITLE V—OTHER MATTERS**

20 **SEC. 501. SURVEY OF MEMBERS OF THE ARMED FORCES ON** 21 **THEIR EXPERIENCES WITH MILITARY INVES-** 22 **TIGATIONS AND MILITARY JUSTICE.**

23 (a) IN GENERAL.—Chapter 23 of title 10, United
 24 States Code, is amended by inserting after section 481a
 25 the following new section:

1 **“§ 481b. Military investigation and justice experi-**
2 **ences: survey of members of the armed**
3 **forces**

4 “(a) SURVEYS REQUIRED.—(1) The Secretary of De-
5 fense shall conduct from time to time a survey on the ex-
6 periences of members of the armed forces with military
7 investigations and military justice in accordance with this
8 section and guidance issued by the Secretary for purposes
9 of this section.

10 “(2) The survey under this section shall be known
11 as the ‘Military Investigation and Justice Experience Sur-
12 vey’.

13 “(b) MATTERS COVERED BY SURVEY.—The guidance
14 issued by the Secretary under this section on the survey
15 shall include specification of the following:

16 “(1) The individuals to be surveyed, including
17 any member of the armed forces serving on active
18 duty who is a victim of an alleged sex-related offense
19 and who made an unrestricted report of that offense.

20 “(2) The matters to be covered in the survey,
21 including—

22 “(A) the experience of the individuals sur-
23 veyed with the military criminal investigative
24 organization that investigated the alleged of-
25 fense, and with the Special Victims’ Counsel in

1 the case of a member who was the victim of an
 2 alleged sex-related offense; and

3 “(B) if the individual’s report resulted in a
 4 charge or charges that were referred to a court-
 5 martial, the experience of the individual with
 6 the prosecutor and the court-martial in general.

7 “(3) The timing of the administration of the
 8 survey, including when the investigation or case is
 9 closed or otherwise complete.

10 “(c) FREQUENCY OF SURVEY.—The survey required
 11 by this section shall be conducted at least once every four
 12 years, but not more frequently than once every two years.

13 “(d) DEFINITIONS.—In this section:

14 “(1) ALLEGED SEX-RELATED OFFENSE.—The
 15 term ‘alleged sex-related offense’ has the meaning
 16 provided in section 1044e(g) of this title.

17 “(2) UNRESTRICTED REPORT.—The term ‘un-
 18 restricted report’ means a report that is not a re-
 19 stricted report.

20 “(3) RESTRICTED REPORT.—The term ‘re-
 21 stricted report’ means a report concerning a sexual
 22 assault that is treated as a restricted report under
 23 section 1565b(b) of this title.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
 25 at the beginning of chapter 23 of such title is amended

1 by inserting after the item relating to section 481a the
 2 following new item:

“481b. Military investigation and justice experiences: survey of members of the
 armed forces.”.

3 **SEC. 502. ANNUAL REPORT ON MILITARY PROTECTIVE OR-**
 4 **DERS.**

5 (a) REPORT REQUIRED.—Chapter 80 of title 10,
 6 United States Code, is amended by adding at the end the
 7 following new section:

8 **“§ 1567b. Annual report on military protective orders**

9 “Not later than March 1, 2020, and each year there-
 10 after through 2024, the Secretary of Defense shall submit
 11 to the congressional defense committees a report that
 12 specifies each of the following:

13 “(1) The number of military protective orders
 14 issued in the calendar year preceding the year in
 15 which the report is submitted.

16 “(2) The number of such orders that were re-
 17 ported to appropriate civilian authorities in accord-
 18 ance with section 1567a(a) of this title in such
 19 year.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
 21 at the beginning of chapter 80 of such title is amended
 22 by adding after the item relating to section 1567a the fol-
 23 lowing new item:

“1567b. Annual report on military protective orders.”.

1 **SEC. 503. PRIVACY ACT EXCLUSION FOR COURTS-MARTIAL**
 2 **TO ALLOW FOR PUBLIC ACCESS TO DOCKETS,**
 3 **FILINGS, AND COURT RECORDS.**

4 (a) IN GENERAL.—Section 940a of title 10, United
 5 States Code (article 140a of the Uniform Code of Military
 6 Justice), is amended—

7 (1) by striking “The Secretary of Defense” and
 8 inserting “(a) IN GENERAL.—The Secretary of De-
 9 fense, in consultation with the Secretary of Home-
 10 land Security”;

11 (2) in subsection (a), as designated by para-
 12 graph (1)—

13 (A) in the matter preceding paragraph (1),
 14 by inserting “(including with respect to the
 15 Coast Guard)” after “military justice system”;
 16 and

17 (B) in paragraph (4), by inserting “public”
 18 before “access to docket information”; and

19 (3) by adding at the end the following new sub-
 20 sections:

21 “(b) INAPPLICABILITY OF PRIVACY ACT.—Section
 22 552a of title 5 shall not apply to records of trial produced
 23 or distributed within the military justice system or docket
 24 information, filings, and records made publicly accessible
 25 in accordance with the uniform standards and criteria for
 26 conduct established by the Secretary under subsection (a).

1 “(c) INAPPLICABILITY TO CERTAIN DOCKETS AND
 2 RECORDS.—Nothing in this section shall be construed to
 3 provide public access to docket information, filings, or
 4 records that are classified, subject to a judicial protective
 5 order, or ordered sealed.”.

6 (b) EXISTING STANDARDS AND CRITERIA.—The Sec-
 7 retary of Homeland Security shall apply to the Coast
 8 Guard the standards and criteria for conduct established
 9 by the Secretary of Defense under section 940a of title
 10 10, United States Code (article 140a of the Uniform Code
 11 of Military Justice), as in effect on the day before the date
 12 of the enactment of this Act until such time as the Sec-
 13 retary of Defense, in consultation with the Secretary of
 14 Homeland Security, prescribes revised standards and cri-
 15 teria for conduct under such section that implement the
 16 amendments made by subsection (a) of this section.

17 **SEC. 504. REPORT ON STANDARDIZATION AMONG THE MILI-**
 18 **TARY DEPARTMENTS IN COLLECTION AND**
 19 **PRESENTATION OF INFORMATION ON MAT-**
 20 **TERS WITHIN THE MILITARY JUSTICE SYS-**
 21 **TEM.**

22 Not later than 180 days after the date of the enact-
 23 ment of this Act, the Secretary of Defense shall, in con-
 24 sultation with the Secretaries of the military departments,
 25 submit to the Committees on Armed Services of the Sen-

1 ate and the House of Representatives a report setting
2 forth the following:

3 (1) A plan for actions to provide for standard-
4 ization, to the extent practicable, among the military
5 departments in the collection and presentation of in-
6 formation on matters within their military justice
7 systems, including information collected and main-
8 tained for purposes of section 940a of title 10,
9 United States Code (article 140a of the Uniform
10 Code of Military Justice), and such other informa-
11 tion as the Secretary considers appropriate.

12 (2) An assessment of the feasibility and advis-
13 ability of establishing and maintaining a single, De-
14 partment of Defense-wide data management system
15 for the standardized collection and presentation of
16 information described in paragraph (1).

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