

113TH CONGRESS
1ST SESSION

S. 871

To amend title 10, United States Code, to enhance assistance for victims of sexual assault committed by members of the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2013

Mrs. MURRAY (for herself, Ms. AYOTTE, and Mr. BLUMENTHAL) 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 assistance for victims of sexual assault committed by members of the Armed Forces, 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.**

4 This Act may be cited as the “Combating Military
5 Sexual Assault Act of 2013”.

1 **SEC. 2. SPECIAL VICTIMS' COUNSEL FOR VICTIMS OF SEX-**
2 **UAL ASSAULT COMMITTED BY MEMBERS OF**
3 **THE ARMED FORCES.**

4 (a) SPECIAL VICTIMS' COUNSEL FOR VICTIMS OF
5 SEXUAL ASSAULT COMMITTED BY MEMBERS OF THE
6 ARMED FORCES.—

7 (1) IN GENERAL.—Not later than 180 days
8 after the date of the enactment of this Act, the Sec-
9 retaries of the military departments shall each im-
10 plement a program on the provision of a Special Vic-
11 tims' Counsel to victims of a sexual assault com-
12 mitted by a member of the Armed Forces.

13 (2) QUALIFICATION.—An individual may not be
14 designated as a Special Victims' Counsel under this
15 subsection unless the individual is—

16 (A) a judge advocate who is a graduate of
17 an accredited law school or is a member of the
18 bar of a Federal court or the highest court of
19 a State; and

20 (B) is certified as competent to be des-
21 ignated as a Special Victims' Counsel by the
22 Judge Advocate General of the Armed Force of
23 which the individual is a member.

24 (3) DUTIES.—

25 (A) IN GENERAL.—Subject to subpara-
26 graph (C), the duties of a Special Victims'

1 Counsel shall include the provision of legal ad-
2 vice and assistance to a victim in connection
3 with criminal and civil legal matters related to
4 the sexual assault committed against the victim,
5 including the following:

6 (i) Legal advice and assistance re-
7 garding criminal liability of the victim.

8 (ii) Legal advice and assistance re-
9 garding the victim's responsibility to tes-
10 tify, and other duties to the court.

11 (iii) Legal advice regarding the poten-
12 tial for civil litigation against other parties
13 (other than the Department of Defense).

14 (iv) Legal advice regarding any pro-
15 ceedings of the military justice process
16 which the victim may observe.

17 (v) Legal advice and assistance re-
18 garding any proceeding of the military jus-
19 tice process in which the victim may par-
20 ticipate as a witness or other party.

21 (vi) Legal advice and assistance re-
22 garding available military or civilian re-
23 straining or protective orders.

1 (vii) Legal advice and assistance re-
2 garding available military and veteran ben-
3 efits.

4 (viii) Legal assistance in personal civil
5 legal matters in connection with the sexual
6 assault in accordance with section 1044 of
7 title 10, United States Code.

8 (ix) Such other legal advice and as-
9 sistance as the Secretary of the military
10 department concerned shall specify for
11 purposes of the program implemented
12 under this subsection.

13 (B) NATURE OF RELATIONSHIP.—The re-
14 lationship between a Special Victims' Counsel
15 and a victim in the provision of legal advice and
16 assistance shall be the relationship between an
17 attorney and client.

18 (b) ASSISTANCE AND REPORTING.—

19 (1) ASSISTANCE.—Section 1565b of title 10,
20 United States Code, is amended—

21 (A) by redesignating subsection (b) as sub-
22 section (c); and

23 (B) by inserting after subsection (a) the
24 following new subsection (b):

1 “(b) AVAILABILITY OF SPECIAL VICTIMS’ COUNSEL
2 FOR VICTIMS OF SEXUAL ASSAULT COMMITTED BY MEM-
3 BERS OF THE ARMED FORCES.—(1) A member of the
4 armed forces, or a dependent of a member, who is the
5 victim of a sexual assault described in paragraph (2) may
6 be provided assistance by a Special Victims’ Counsel.

7 “(2) A sexual assault described in this paragraph is
8 any offense if alleged to have been committed by a member
9 of the armed forces as follows:

10 “(A) Rape or sexual assault under section 920
11 of this title (article 120 of the Uniform Code of Mili-
12 tary Justice).

13 “(B) An attempt to commit an offense specified
14 in subparagraph (A) as punishable under section
15 880 of this title (article 80 of the Uniform Code of
16 Military Justice).

17 “(3) A member of the armed forces or dependent who
18 is the victim of sexual assault described in paragraph (2)
19 shall be informed of the availability of assistance under
20 paragraph (1) as soon as the member or dependent seeks
21 assistance from a Sexual Assault Response Coordinator,
22 a Sexual Assault Victim Advocate, a military criminal in-
23 vestigator, a victim/witness liaison, a trial counsel, health
24 care providers, or any other personnel designated by the
25 Secretary of the military department concerned for pur-

1 poses of this paragraph. The member or dependent shall
 2 also be informed that the assistance of a Special Victims'
 3 Counsel under paragraph (1) is optional and may be de-
 4 clined, in whole or in part, at any time.

5 “(4) Assistance of a Special Victims’ Counsel under
 6 paragraph (1) shall be available to a member or dependent
 7 regardless of whether the member or dependent elects un-
 8 restricted or restricted (confidential) reporting of the sex-
 9 ual assault.”.

10 (2) REPORTING.—Subsection (e) of such sec-
 11 tion, as redesignated by paragraph (1)(A) of this
 12 subsection, is further amended in paragraph (2)—

13 (A) by redesignating subparagraph (C) as
 14 subparagraph (D); and

15 (B) by inserting after subparagraph (B)
 16 the following new subparagraph (C):

17 “(C) A Special Victims’ Counsel.”.

18 (e) CONFORMING AMENDMENTS TO AUTHORITY ON
 19 SARC, SAVA, AND RELATED ASSISTANCE.—Subsection
 20 (a) of such section is amended—

21 (1) in paragraph (1), by striking “may” and in-
 22 serting “shall, upon request,”; and

23 (2) in paragraph (2)—

1 (A) by inserting “a Special Victims’ Coun-
 2 sel,” after “a Sexual Assault Victim Advocate,”;
 3 and

4 (B) by striking “or a trial counsel” and in-
 5 serting “a trial counsel, health care providers,
 6 or any other personnel designated by the Sec-
 7 retary of the military department concerned for
 8 purposes of this paragraph”.

9 (d) CONFORMING AND CLERICAL AMENDMENTS.—

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

12 **“§ 1565b. Victims of sexual assault: access to legal as-**
 13 **sistance and services of Sexual Assault**
 14 **Coordinators, Sexual Assault Victim Ad-**
 15 **vocates, and Special Victims’ Counsels”.**

16 (2) TABLE OF SECTIONS.—The table of sections
 17 at the beginning of chapter 80 of such title is
 18 amended by striking the item relating to section
 19 1565b and inserting the following new item:

“1565b. Victims of sexual assault: access to legal assistance and services of Sex-
 ual Assault Coordinators, Sexual Assault Victim Advocates,
 and Special Victims’ Counsels.”.

1 **SEC. 3. ENHANCED RESPONSIBILITIES OF SEXUAL AS-**
2 **SAULT PREVENTION AND RESPONSE OFFICE**
3 **FOR DEPARTMENT OF DEFENSE SEXUAL AS-**
4 **SAULT PREVENTION AND RESPONSE PRO-**
5 **GRAM.**

6 (a) IN GENERAL.—Section 1611(b) of the Ike Skel-
7 ton National Defense Authorization Act for Fiscal Year
8 2011 (10 U.S.C. 1561 note) is amended by striking
9 “shall—” and all that follows and inserting “shall do the
10 following:

11 “(1) Oversee development and implementation
12 of the comprehensive policy for the Department of
13 Defense sexual assault prevention and response pro-
14 gram, including guidance and assistance for the
15 military departments in addressing matters relating
16 to sexual assault prevention and response.

17 “(2) Serve as the single point of authority, ac-
18 countability, and oversight for the sexual assault
19 prevention and response program.

20 “(3) Undertake responsibility for the oversight
21 of the implementation of the sexual assault preven-
22 tion and response program by the Armed Forces.

23 “(4) Collect and maintain data of the military
24 departments on sexual assault in accordance with
25 section 1615.

1 “(5) Provide oversight to ensure that the mili-
2 tary departments maintain documents relating to
3 the following:

4 “(A) Allegations and complaints of sexual
5 assault involving members of the Armed Forces.

6 “(B) Courts-martial or trials of members
7 of the Armed Forces for offenses relating to
8 sexual assault.

9 “(6) Act as liaison between the Department of
10 Defense and other Federal and State agencies on
11 programs and efforts relating to sexual assault pre-
12 vention and response.

13 “(7) Oversee development of strategic program
14 guidance and joint planning objectives for resources
15 in support of the sexual assault prevention and re-
16 sponse program, and make recommendations on
17 modifications to policy, law, and regulations needed
18 to ensure the continuing availability of such re-
19 sources.

20 “(8) Provide to the Secretary of Veterans Af-
21 fairs any records or documents on sexual assault in
22 the Armed Forces, including restricted reports with
23 the approval of the individuals who filed such re-
24 ports, that are required by the Secretary for pur-

1 poses of the administration of the laws administered
2 by the Secretary.”.

3 (b) COLLECTION AND MAINTENANCE OF DATA.—

4 Subtitle A of title XVI of such Act (10 U.S.C. 1561 note)
5 is amended by adding at the end the following new section:

6 **“SEC. 1615. COLLECTION AND MAINTENANCE OF DATA OF**
7 **MILITARY DEPARTMENTS ON SEXUAL AS-**
8 **SAULT PREVENTION AND RESPONSE.**

9 “In carrying out the requirements of section
10 1611(b)(4), the Director of the Sexual Assault Prevention
11 and Response Office shall do the following:

12 “(1) Collect from each military department on
13 a quarterly and annual basis data of such military
14 department on sexual assaults involving members of
15 the Armed Forces in a manner consistent with the
16 policy and procedures developed pursuant to section
17 586 of the National Defense Authorization Act for
18 Fiscal Year 2012 (10 U.S.C. 1561 note) that pro-
19 tect the privacy of individuals named in records and
20 the status of records.

21 “(2) Maintain data collected from the military
22 departments under paragraph (1).

23 “(3) Assemble from the data collected and
24 maintained under this section quarterly and annual

1 reports on the involvement of members of the Armed
2 Forces in incidents of sexual assault.

3 “(4) Develop metrics to measure the effective-
4 ness of, and compliance with, training and aware-
5 ness objectives of the military departments on sexual
6 assault prevention and response.

7 “(5) Establish categories of information to be
8 provided by the military departments in connection
9 with reports on sexual assault prevention and re-
10 sponse, including, but not limited to, the annual re-
11 ports required by section 1631, and ensure that the
12 submittals of the military departments for purposes
13 of such reports include data within such cat-
14 egories.”.

15 (c) ELEMENT ON UNIT OF ACCUSED AND VICTIM IN
16 CASE SYNOPSES IN ANNUAL REPORT ON SEXUAL AS-
17 SAULTS.—

18 (1) IN GENERAL.—Section 1631(f) of such Act
19 (10 U.S.C. 1561 note) is amended—

20 (A) by redesignating paragraphs (5) and
21 (6) as paragraphs (6) and (7), respectively; and

22 (B) by inserting after paragraph (4) the
23 following new paragraph (5):

24 “(5) The case synopsis shall indicate the unit of
25 each member of the Armed Forces accused of com-

1 mitting a sexual assault and the unit of each mem-
 2 ber of the Armed Forces who is a victim of sexual
 3 assault.”.

4 (2) APPLICATION OF AMENDMENTS.—The
 5 amendments made by paragraph (1) shall apply be-
 6 ginning with the report regarding sexual assaults in-
 7 volving members of the Armed Forces required to be
 8 submitted by March 1, 2014, under section 1631 of
 9 the Ike Skelton National Defense Authorization Act
 10 for Fiscal Year 2011.

11 **SEC. 4. DISPOSITION AND OTHER REQUIREMENTS FOR**
 12 **RAPE AND SEXUAL ASSAULT OFFENSES**
 13 **UNDER THE UNIFORM CODE OF MILITARY**
 14 **JUSTICE.**

15 (a) DISPOSITION AND OTHER REQUIREMENTS.—

16 (1) IN GENERAL.—Subchapter VI of chapter 47
 17 of title 10, United States Code (the Uniform Code
 18 of Military Justice), is amended by inserting after
 19 section 830 (article 30) the following new section
 20 (article):

21 **“§ 830a. Art. 30a. Rape and sexual assault offenses:**
 22 **disposition and other requirements**

23 “(a) IN GENERAL.—Notwithstanding any other pro-
 24 vision of this chapter, charges on offenses specified in sub-
 25 section (b) shall be subject to the disposition requirement

1 in subsection (c) and subject to the other requirements
2 and limitations set forth this section.

3 “(b) COVERED OFFENSES.—The charges on offenses
4 specified in this subsection are charges on the offenses as
5 follows:

6 “(1) Rape or sexual assault under section 920
7 of this title (article 120).

8 “(2) An attempt to commit an offense specified
9 in paragraph (1) as punishable under section 880 of
10 this title (article 80).

11 “(c) DISPOSITION REQUIREMENTS.—(1) Subject to
12 paragraph (2), the charges on any offense specified in sub-
13 section (b) shall be referred to an appropriate authority
14 for convening general courts-martial under section 822 of
15 this title (article 22) for disposition.

16 “(2) If the appropriate authority to which charges de-
17 scribed in paragraph (1) would be referred under that
18 paragraph is a member with direct supervisory authority
19 over the member alleged to have committed the offense,
20 such charges shall be referred to a superior authority com-
21 petent to convene a general court-martial.

22 “(d) VICTIM’S RIGHTS.—A victim of an offense speci-
23 fied in subsection (b) shall have rights as follows:

24 “(1) To a Special Victims’ Counsel provided
25 under section 1565b(b) of this title.

1 “(2) To have all communications between the
2 victim and any Sexual Assault Response Coordi-
3 nator, Sexual Assault Victim Advocate, or Special
4 Victims’ Counsel for the victim considered privileged
5 communications for purposes of the case and any
6 proceedings relating to the case.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-
8 tions at the beginning of subchapter VI of chapter
9 47 of such title (the Uniform Code of Military Jus-
10 tice) is amended by inserting after the item relating
11 to section 830 (article 30) the following new item:

“830a. Art. 30a. Rape and sexual assault offenses: disposition and other re-
quirements.”.

12 (b) REVISION OF MANUAL FOR COURTS-MARTIAL.—
13 The Joint Service Committee on Military Justice shall
14 amend the Manual for Courts-Martial to reflect the re-
15 quirements in section 830a of title 10, United States Code
16 (article 830a of the Uniform Code of Military Justice),
17 as added by subsection (b), including, in particular, sec-
18 tion 306 of the Manual relating to disposition of charges.

19 **SEC. 5. PROHIBITION ON SEXUAL ACTS AND CONTACT BE-**
20 **TWEEN CERTAIN MILITARY INSTRUCTORS**
21 **AND THEIR TRAINEES.**

22 (a) PROHIBITION.—Section 920 of title 10, United
23 States Code (article 120 of the Uniform Code of Military
24 Justice), is amended—

1 (1) by redesignating subsections (e) through (g)
2 as subsections (f) through (h); respectively; and

3 (2) by inserting after subsection (d) the fol-
4 lowing new subsection (e):

5 “(e) SEXUAL ACTS AND SEXUAL CONTACT BETWEEN
6 CERTAIN MILITARY INSTRUCTORS AND TRAINEES.—

7 “(1) ENHANCED PROHIBITION ON SEXUAL AS-
8 SAULT.—A military instructor who commits a sexual
9 act upon a member of the armed forces while the
10 member is undergoing basic training (or its equiva-
11 lent) or within 30 days after completing such train-
12 ing is guilty of sexual assault and shall be punished
13 as a court-martial may direct.

14 “(2) ENHANCED PROHIBITION ON ABUSIVE
15 SEXUAL CONTACT.—A military instructor who com-
16 mits or causes sexual contact upon or by a member
17 of the armed forces while the member is undergoing
18 basic training (or its equivalent), or within 30 days
19 after completing such training, which instructor was
20 not the spouse of the member at the member’s com-
21 mencement of such training, is guilty of abusive sex-
22 ual contact and shall be punished as a court-martial
23 may direct.

24 “(3) COVERED MILITARY INSTRUCTORS.—This
25 subsection applies with respect to the following

1 members of the armed forces otherwise subject to
2 this chapter:

3 “(A) Drill Sergeants in the Army.

4 “(B) Drill Instructors in the Marine
5 Corps.

6 “(C) Recruit Division Commanders in the
7 Navy.

8 “(D) Military Training instructors in the
9 Air Force.

10 “(E) Company Commanders in the Coast
11 Guard.

12 “(F) Such other members of the armed
13 forces as the Secretary concerned may des-
14 ignate as having supervisory authority over new
15 recruits undergoing basic training (or its equiv-
16 alent).

17 “(4) CONSENT.—Lack of consent is not an ele-
18 ment and need not be proven in any prosecution
19 under this subsection. Consent is not a defense for
20 any conduct in issue in any prosecution under this
21 subsection.”.

22 (b) CROSS REFERENCES TO DEFINITIONS.—Chapter
23 47 of title 10, United States Code (the Uniform Code of
24 Military Justice), is amended—

1 (1) in section 920b(h)(1) (article 120b(h)(1)),
 2 by striking “section 920(g) of this title (article
 3 120(g))” and inserting “section 920 of this title (ar-
 4 ticle 120)”; and

5 (2) in section 920c(d)(1) (article 120c(d)(1)),
 6 by striking “section 920(g) of this title (article
 7 120(g))” and inserting “section 920 of this title
 8 (article 120)”.

9 **SEC. 6. AVAILABILITY OF SEXUAL ASSAULT RESPONSE CO-**
 10 **ORDINATORS FOR MEMBERS OF THE NA-**
 11 **TIONAL GUARD.**

12 (a) AVAILABILITY IN EACH NATIONAL GUARD STATE
 13 AND TERRITORY.—Section 584(a) of the National De-
 14 fense Authorization Act for Fiscal Year 2012 (Public Law
 15 112–81; 125 Stat. 1433; 10 U.S.C. 1561 note) is amend-
 16 ed—

17 (1) by redesignating paragraph (2) as para-
 18 graph (3); and

19 (2) by inserting after paragraph (1) the fol-
 20 lowing new paragraph (2):

21 “(2) AVAILABILITY IN EACH NATIONAL GUARD
 22 STATE AND TERRITORY.—The National Guard of
 23 each State and Territory shall ensure that a Sexual
 24 Assault Response Coordinator is available at all
 25 times to the members of the National Guard of such

1 State or Territory. The Secretary of the Army and
2 the Secretary of the Air Force may, in consultation
3 with the Chief of the National Guard Bureau, assign
4 additional Sexual Assault Response Coordinators in
5 a State or Territory as necessary based on the re-
6 source requirements of National Guard units within
7 such State or Territory. Any additional Sexual As-
8 sault Response Coordinator may serve on a full-time
9 or part-time basis at the discretion of the assigning
10 Secretary.”.

11 (b) AVAILABILITY TO PROVIDE ASSISTANCE FOR
12 MEMBERS OF THE NATIONAL GUARD IN STATE STA-
13 TUS.—Section 1565b of title 10, United States Code, as
14 amended by section 2 of this Act, is further amended in
15 subsection (a)—

16 (1) by redesignating paragraphs (2) and (3) as
17 paragraphs (3) and (4), respectively; and

18 (2) by inserting after paragraph (1) the fol-
19 lowing new paragraph (2):

20 “(2) In the case of a member of the National Guard
21 in State status under title 32 who is the victim of a sexual
22 assault, assistance provided by a Sexual Assault Response
23 Coordinator shall be provided by the Sexual Assault Re-
24 sponse Coordinator Assistance available in the State or
25 Territory concerned under paragraph (2) of section 584(a)

1 of the National Defense Authorization Act for Fiscal Year
2 2012 (10 U.S.C. 1561 note), but, with the approval of
3 the Secretary of the Army or the Secretary of the Air
4 Force, as applicable, may also be provided by Sexual As-
5 sault Response Coordinator assigned under paragraph (1)
6 of that section.”.

○