

117TH CONGRESS
1ST SESSION

H. R. 4104

To reform the disposition of charges and convening of courts-martial for certain offenses under the Uniform Code of Military Justice and increase the prevention of sexual assaults and other crimes in the military.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2021

Ms. SPEIER (for herself, Mr. TURNER, Mr. BROWN, Mrs. MILLER-MEEKS, Mrs. LURLA, Mr. KELLY of Mississippi, Ms. ESCOBAR, Mr. MULLIN, Ms. GARCIA of Texas, Mr. HUDSON, Ms. BASS, Mrs. BEATTY, Ms. BLUNT ROCHESTER, Mr. BOWMAN, Ms. BROWNLEY, Ms. BUSH, Mrs. BUSTOS, Mr. CARSON, Mr. CASTEN, Ms. CASTOR of Florida, Mr. CASTRO of Texas, Mr. CICILLINE, Ms. CLARK of Massachusetts, Mr. COOPER, Mr. COURTNEY, Mr. CROW, Mr. CUELLAR, Mr. DANNY K. DAVIS of Illinois, Ms. DELAURO, Ms. DELBENE, Mr. DEUTCH, Mr. DOGGETT, Ms. ESHOO, Ms. LOIS FRANKEL of Florida, Mr. GALLEG0, Mr. GARAMENDI, Mr. GOMEZ, Mr. GRIJALVA, Mrs. HAYES, Mr. HORSFORD, Ms. HOULAHAN, Ms. JACOBS of California, Ms. SCHAKOWSKY, Mr. JONES, Ms. KAPTUR, Mr. KEATING, Mr. KHANNA, Ms. KUSTER, Mr. LANGEVIN, Mr. LARSON of Connecticut, Ms. LEE of California, Mrs. LEE of Nevada, Ms. LEGER FERNANDEZ, Ms. LOFGREN, Mr. LYNCH, Mrs. CAROLYN B. MALONEY of New York, Ms. MANNING, Ms. MATSUI, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MCNERNEY, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MRVAN, Mr. NADLER, Mr. NEGUSE, Ms. NEWMAN, Ms. NORTON, Mr. PALLONE, Mr. PANETTA, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Ms. ROYBAL-ALLARD, Ms. SÁNCHEZ, Ms. SCANLON, Ms. SCHRIER, Ms. SHERRILL, Ms. STEVENS, Ms. STRICKLAND, Mr. SWALWELL, Mr. TAKANO, Mr. THOMPSON of California, Ms. TITUS, Mr. TONKO, Mrs. TRAHAN, Mr. TRONE, Mr. VEASEY, Ms. VELÁZQUEZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILSON of Florida, Ms. BARRAGÁN, Ms. JACKSON LEE, Mr. CARTWRIGHT, Ms. ADAMS, Mr. BISHOP of Georgia, Mr. BUTTERFIELD, Mr. CLEAVER, Mr. CORREA, Ms. DEGETTE, Mrs. DEMINGS, Mrs. DINGELL, Mr. EVANS, Mr. JEFFRIES, Mr. JOHNSON of Georgia, Mr. LEVIN of Michigan, Ms. PINGREE, Ms. PLASKETT, Mr. VARGAS, Mr. THOMPSON of Mississippi, Ms. WEXTON, Ms. WILLIAMS of Georgia, and Ms. CRAIG) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To reform the disposition of charges and convening of courts-martial for certain offenses under the Uniform Code of Military Justice and increase the prevention of sexual assaults and other crimes in the military.

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 “Vanessa Guillén Mili-
5 tary Justice Improvement and Increasing Prevention
6 Act”.

7 **SEC. 2. IMPROVEMENT OF DETERMINATIONS ON DISPOSI-**
8 **TION OF CHARGES FOR CERTAIN OFFENSES**
9 **UNDER UCMJ WITH AUTHORIZED MAXIMUM**
10 **SENTENCE OF CONFINEMENT OF MORE THAN**
11 **ONE YEAR.**

12 (a) IMPROVEMENT OF DETERMINATIONS.—

13 (1) MILITARY DEPARTMENTS.—With respect to
14 charges under chapter 47 of title 10, United States
15 Code (the Uniform Code of Military Justice), that
16 allege an offense specified in subsection (b) and not
17 excluded under subsection (c), the Secretary of De-
18 fense shall require the Secretaries of the military de-
19 partments to provide as described in subsection (d)
20 for the determinations as follows:

1 (A) Determinations under section 830 of
2 such chapter (article 30 of the Uniform Code of
3 Military Justice) on the preferral of charges.

4 (B) Determinations under section 830 of
5 such chapter (article 30 of the Uniform Code of
6 Military Justice) on the disposition of charges.

7 (C) Determinations under sections 822
8 and 823 of such chapter (articles 22 and 23 of
9 the Uniform Code of Military Justice) on the
10 referral of charges (as that term is defined in
11 section 834(d) of such chapter (article 34(d) of
12 the Uniform Code of Military Justice)).

13 (2) HOMELAND SECURITY.—With respect to
14 charges under chapter 47 of title 10, United States
15 Code (the Uniform Code of Military Justice), that
16 allege an offense specified in subsection (b) and not
17 excluded under subsection (c) against a member of
18 the Coast Guard (when it is not operating as a serv-
19 ice in the Navy), the Secretary of Homeland Secu-
20 rity shall provide as described in subsection (d) for
21 the determinations as follows:

22 (A) Determinations under section 830 of
23 such chapter (article 30 of the Uniform Code of
24 Military Justice) on the preferral of charges.

1 (B) Determinations under section 830 of
2 such chapter (article 30 of the Uniform Code of
3 Military Justice) on the disposition of charges.

4 (C) Determinations under sections 822
5 and 823 of such chapter (articles 22 and 23 of
6 the Uniform Code of Military Justice) on the
7 referral of charges (as that term is defined in
8 section 834(d) of such chapter (article 34(d) of
9 the Uniform Code of Military Justice)).

10 (3) RULE OF CONSTRUCTION.—This section
11 shall not be construed to terminate or otherwise
12 alter the authorities enumerated in any articles of
13 the Uniform Code of Military Justice other than ar-
14 ticles 22, 23, and 30 (10 U.S.C. 822, 823, and 830).

15 (b) COVERED OFFENSES.—An offense specified in
16 this subsection is an offense as follows:

17 (1)(A) Offenses under the following sections of
18 chapter 47 of title 10, United States Code (the Uni-
19 form Code of Military Justice), for which the max-
20 imum punishment authorized under that chapter in-
21 cludes confinement for more than one year: sections
22 893a, 917a, 918, 919, 919a, 919b, 920, 920a, 920b,
23 920c, 921, 921a, 921b, 922, 924, 924a, 924b, 925,
24 926, 927, 928(b) and (c), 928a, 928b, 930, 931,
25 931a, 931b, 931c, 931d, 931e, 931f, 931g, and 932

1 (articles 93a, 117a, 118, 119, 119a, 119b, 120,
2 120a, 120b, 120c, 121, 121a, 121b, 122, 124, 124a,
3 124b, 125, 126, 127, 128(b) and (c), 128a, 128b,
4 130, 131, 131a, 131b, 131c, 131d, 131e, 131f,
5 131g, and 132, respectively, of the Uniform Code of
6 Military Justice).

7 (B) The offenses of child pornography, neg-
8 ligent homicide, indecent conduct, indecent language
9 communicated to any child under the age of 16
10 years, and pandering and prostitution, as punishable
11 under the general punitive article in 934 of such
12 title (article 134 of the Uniform Code of Military
13 Justice).

14 (2) A conspiracy to commit an offense specified
15 in paragraph (1) as punishable under section 881 of
16 title 10, United States Code (article 81 of the Uni-
17 form Code of Military Justice).

18 (3) A solicitation to commit an offense specified
19 in paragraph (1) as punishable under section 882 of
20 title 10, United States Code (article 82 of the Uni-
21 form Code of Military Justice).

22 (4) An attempt to commit an offense specified
23 in paragraph (1) as punishable under section 880 of
24 title 10, United States Code (article 80 of the Uni-
25 form Code of Military Justice).

1 (c) EXCLUDED OFFENSES.—Subsection (a) does not
2 apply to an offense as follows:

3 (1) An offense under sections 883 through 917
4 of title 10, United States Code (articles 83 through
5 117 of the Uniform Code of Military Justice), but
6 not an offense under section 893a of such title (arti-
7 cle 93a of the Uniform Code of Military Justice).

8 (2) An offense under section 922a, 923, 923a,
9 or 928(a) of title 10, United States Code (articles
10 122a, 123, 123a, and 128(a) of the Uniform Code
11 of Military Justice).

12 (3) An offense under section 933 or 934 of title
13 10, United States Code (articles 133 and 134 of the
14 Uniform Code of Military Justice), but not the of-
15 fense of child pornography, negligent homicide, inde-
16 cent conduct, indecent language communicated to
17 any child under the age of 16 years, or pandering
18 and prostitution as punishable under the general pu-
19 nitive article in section 934 of such title (article 134
20 of the Uniform Code of Military Justice).

21 (4) A conspiracy to commit an offense specified
22 in paragraphs (1) through (3) as punishable under
23 section 881 of title 10, United States Code (article
24 81 of the Uniform Code of Military Justice).

1 (5) A solicitation to commit an offense specified
2 in paragraphs (1) through (3) as punishable under
3 section 882 of title 10, United States Code (article
4 82 of the Uniform Code of Military Justice).

5 (6) An attempt to commit an offense specified
6 in paragraphs (1) through (3) as punishable under
7 section 880 of title 10, United States Code (article
8 80 of the Uniform Code of Military Justice).

9 (d) REQUIREMENTS AND LIMITATIONS.—The dis-
10 position of charges covered by subsection (a) shall be sub-
11 ject to the following:

12 (1) The determination whether to cause charges
13 to be preferred or refer such charges to a court-mar-
14 tial for trial, as applicable, shall be made by a com-
15 missioned officer of the Armed Forces designated as
16 a court-martial convening authority in accordance
17 with regulations prescribed for purposes of this sub-
18 section from among commissioned officers of the
19 Armed Forces in grade O-6 or higher who—

20 (A) are available for detail as trial counsel
21 under section 827 of title 10, United States
22 Code (article 27 of the Uniform Code of Mili-
23 tary Justice);

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

1 (C) are outside the chain of command of
2 the member subject to such charges.

3 (2) Upon a determination under paragraph (1)
4 to refer charges to a court-martial for trial, the offi-
5 cer making that determination shall determine
6 whether to refer such charges for trial by a general
7 court-martial convened under section 822 of title 10,
8 United States Code (article 22 of the Uniform Code
9 of Military Justice), or a special court-martial con-
10 vened under section 823 of title 10, United States
11 Code (article 23 of the Uniform Code of Military
12 Justice).

13 (3) A determination under paragraph (1) to
14 cause charges to be preferred or refer charges to a
15 court-martial for trial, as applicable, shall cover all
16 known offenses, including lesser included offenses.

17 (4) The determination to cause charges to be
18 preferred or refer charges to a court-martial for
19 trial, as applicable, under paragraph (1), and the
20 type of court-martial to which to refer under para-
21 graph (2), shall be binding on any applicable con-
22 vening authority for the referral of such charges.

23 (5) The actions of an officer described in para-
24 graph (1) in determining under that paragraph
25 whether or not to cause charges to be preferred or

1 refer charges to a court-martial for trial, as applica-
2 ble, shall be free of unlawful or unauthorized influ-
3 ence or coercion.

4 (6) The determination under paragraph (1) not
5 to refer charges to a general or special court-martial
6 for trial shall not operate to terminate or otherwise
7 alter the authority of commanding officers to refer
8 charges for trial by special court-martial under sec-
9 tion 823 of title 10, United States Code (article 23
10 of the Uniform Code of Military Justice) or sum-
11 mary court-martial convened under section 824 of
12 title 10, United States Code (article 24 of the Uni-
13 form Code of Military Justice), or to impose non-ju-
14 dicial punishment in connection with the conduct
15 covered by such charges as authorized by section
16 815 of title 10, United States Code (article 15 of the
17 Uniform Code of Military Justice).

18 (7) The determination under paragraph (1) to
19 refer charges to a general or special court-martial
20 shall not be subject to section 834 of title 10, United
21 States Code (article 34 of the Uniform Code of Mili-
22 tary Justice), provided that the officer making the
23 determination determines that—

24 (A) the specification alleges an offense
25 under the Uniform Code of Military Justice;

1 (B) there is probable cause to believe that
2 the accused committed the offense charged; and

3 (C) a court-martial would have jurisdiction
4 over the accused and the offense.

5 (e) CONSTRUCTION WITH CHARGES ON OTHER OF-
6 FENSES.—Nothing in this section shall be construed to
7 alter or affect the preferral, disposition, or referral author-
8 ity of charges under chapter 47 of title 10, United States
9 Code (the Uniform Code of Military Justice), that allege
10 an offense for which the maximum punishment authorized
11 under that chapter includes confinement for one year or
12 less, except for the offenses of child pornography, neg-
13 ligent homicide, indecent conduct, indecent language com-
14 municated to any child under the age of 16 years, and
15 pandering and prostitution as punishable under the gen-
16 eral punitive article in section 934 of such title (article
17 134 of the Uniform Code of Military Justice).

18 (f) POLICIES AND PROCEDURES.—

19 (1) IN GENERAL.—The Secretaries of the mili-
20 tary departments and the Secretary of Homeland
21 Security (with respect to the Coast Guard when it
22 is not operating as a service in the Navy) shall re-
23 vise policies and procedures as necessary to comply
24 with this section.

1 (2) UNIFORMITY.—The General Counsel of the
2 Department of Defense and the General Counsel of
3 the Department of Homeland Security shall jointly
4 review the policies and procedures revised under this
5 subsection in order to ensure that any lack of uni-
6 formity in policies and procedures, as so revised,
7 among the military departments and the Depart-
8 ment of Homeland Security does not render uncon-
9 stitutional any policy or procedure, as so revised.

10 (g) MANUAL FOR COURTS-MARTIAL.—The Secretary
11 of Defense shall recommend such changes to the Manual
12 for Courts-Martial as are necessary to ensure compliance
13 with this section.

14 (h) IMPROVED SPECIALIZATION OF CRIMINAL INVES-
15 TIGATORS.—The Secretary of Defense shall revise policies
16 and procedures as necessary to improve specialization of
17 criminal investigators to help increase the efficiency and
18 effectiveness of sexual assault and domestic violence inves-
19 tigations.

1 **SEC. 3. MODIFICATION OF OFFICERS AUTHORIZED TO CON-**
2 **VENE GENERAL AND SPECIAL COURTS-MAR-**
3 **TIAL FOR CERTAIN OFFENSES UNDER UCMJ**
4 **WITH AUTHORIZED MAXIMUM SENTENCE OF**
5 **CONFINEMENT OF MORE THAN ONE YEAR.**

6 (a) IN GENERAL.—Subsection (a) of section 822 of
7 title 10, United States Code (article 22 of the Uniform
8 Code of Military Justice), is amended—

9 (1) by redesignating paragraphs (8) and (9) as
10 paragraphs (9) and (10), respectively; and

11 (2) by inserting after paragraph (7) the fol-
12 lowing new paragraph (8):

13 “(8) with respect to offenses to which section
14 2(a) of the Military Justice Improvement and In-
15 creasing Prevention Act of 2021 applies, the officers
16 in the offices established pursuant to section 3(e) of
17 that Act or officers in the grade of O–6 or higher
18 who are assigned such responsibility by the Chief of
19 Staff of the Army, the Chief of Naval Operations,
20 the Chief of Staff of the Air Force, the Com-
21 mandant of the Marine Corps, or the Commandant
22 of the Coast Guard;”.

23 (b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
24 MAND OF ACCUSED OR VICTIM.—Such section (article) is
25 further amended by adding at the end the following new
26 subsection:

1 “(c) An officer specified in subsection (a)(8) may not
2 convene a court-martial under this section if the officer
3 is in the chain of command of the accused or the victim.”.

4 (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-
5 TIAL.—

6 (1) OFFICES REQUIRED.—Each Chief of Staff
7 of the Armed Forces or Commandant specified in
8 paragraph (8) of section 822(a) of title 10, United
9 States Code (article 22(a) of the Uniform Code of
10 Military Justice), as amended by subsection (a),
11 shall establish an office to do the following:

12 (A) To convene general and special courts-
13 martial under sections 822 and 823 of title 10,
14 United States Code (articles 22 and 23 of the
15 Uniform Code of Military Justice), pursuant to
16 paragraph (8) of section 822(a) of title 10,
17 United States Code (article 22(a) of the Uni-
18 form Code of Military Justice), as so amended,
19 with respect to offenses to which section 2(a)
20 applies.

21 (B) To detail under section 825 of title 10,
22 United States Code (article 25 of the Uniform
23 Code of Military Justice), members of courts-
24 martial convened as described in subparagraph
25 (A).

1 **SEC. 5. MONITORING AND ASSESSMENT OF MODIFICATION**
2 **OF AUTHORITIES BY DEFENSE ADVISORY**
3 **COMMITTEE ON INVESTIGATION, PROSECU-**
4 **TION, AND DEFENSE OF SEXUAL ASSAULT IN**
5 **THE ARMED FORCES.**

6 Section 546(c) of the Carl Levin and Howard P.
7 “Buck” McKeon National Defense Authorization Act for
8 Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “on the investigation” and
11 inserting “on the following:

12 “(A) The investigation”; and

13 (B) by adding at the end the following new
14 subparagraph:

15 “(B) The implementation and efficacy of
16 sections 2 through 4 of the Military Justice Im-
17 provement and Increasing Prevention Act of
18 2021 and the amendments made by such sec-
19 tions.”; and

20 (2) in paragraph (2), by striking “paragraph
21 (1)” and inserting “paragraph (1)(A)”.

22 **SEC. 6. LIMITATION ON MODIFICATIONS TO SEXUAL AS-**
23 **SAULT REPORTING PROCEDURES.**

24 (a) IN GENERAL.—The Secretary of Defense may not
25 amend section 4 of enclosure 4 of Department of Defense
26 Instruction (DoDI) 6495.02, relating to Sexual Assault

1 Prevention and Response (SAPR) Program Procedures, or
2 otherwise prescribe any regulations or guidance relating
3 to the treatment and handling of unrestricted and re-
4 stricted reports of sexual assault, until 30 days after noti-
5 fying the congressional defense committees of the pro-
6 posed amendment or modification.

7 (b) CONGRESSIONAL DEFENSE COMMITTEES DE-
8 FINED.—In this section, the term “congressional defense
9 committees” has the meaning given the term in section
10 101(a) of title 10, United States Code.

11 **SEC. 7. PROFESSIONALIZATION OF MILITARY PROSECU-**
12 **TORS.**

13 (a) IN GENERAL.—The Secretary of Defense shall in-
14 crease enhanced and specialized training to certain pros-
15 ecutors on the proper conduct, presentation, and handling
16 of sexual assault and domestic violence cases.

17 (b) REPORT.—Not later than one year after the date
18 of the enactment of this Act, the Secretary of Defense
19 shall submit to the congressional defense committees a re-
20 port on the program implemented under subsection (a).

21 **SEC. 8. INCREASED TRAINING AND EDUCATION ON MILI-**
22 **TARY SEXUAL ASSAULT.**

23 (a) UNIFORMED OFFICERS AND SENIOR ENLISTED
24 LEADERS.—

1 (1) UNIFORMED OFFICERS.—All uniformed offi-
2 cers of the military services shall be required within
3 2 years of the date of the enactment of this Act to
4 complete training on military sexual assault preven-
5 tion equivalent to that provided to Sexual Assault
6 Prevention and Response Victim Advocates before
7 those officers may be considered for promotion to a
8 grade at or above O–5. A portion of this training
9 shall be in-person, facilitated training.

10 (2) ENLISTED LEADERS.—All senior enlisted
11 leaders of the military services will be required with-
12 in 2 years of the date of the enactment of this Act
13 to complete a training on military sexual assault
14 prevention equivalent to that provided to the Sexual
15 Assault Prevention and Response Victim Advocates
16 before enlisted service members may be considered
17 for promotion to a grade at or above E–9. A portion
18 of this training shall be in-person, facilitated train-
19 ing.

20 (b) OFFICER CANDIDATES AND ROTC.—

21 (1) IN GENERAL.—The United States Army
22 Cadet Command, the Naval Education and Training
23 Command, the Air Education and Training Com-
24 mand, and the Coast Guard Recruiting Command
25 shall carry out a program for increasing training on

1 the prevention of military sexual assault within cadet
2 ranks. A portion of this training shall be in-person,
3 facilitated training.

4 (2) REPORT ON DEVELOPMENT OF PLAN.—Not
5 later than one year after the date of the enactment
6 of this Act, the United States Army Cadet Com-
7 mand, the Naval Education and Training Command,
8 the Air Education and Training Command, and the
9 Coast Guard Recruiting Command shall submit to
10 the congressional defense committees a report on the
11 development of the program required under para-
12 graph (1) and a plan for execution.

13 (3) REPORT ON IMPLEMENTATION.—Not later
14 than two years after the date of the enactment of
15 this Act, the United States Army Cadet Command,
16 the Naval Education and Training Command, the
17 Air Education and Training Command, and the
18 Coast Guard Recruiting Command shall submit to
19 the congressional defense committees a report on the
20 implementation of the program required under para-
21 graph (1).

22 (c) MILITARY SERVICE ACADEMIES.—

23 (1) IN GENERAL.—The Superintendents of the
24 military service academies shall carry out additional
25 military sexual assault prevent training and edu-

1 cation at the academies. A portion of this training
2 shall be in-person, facilitated training.

3 (2) REPORT.—The Secretary of Defense, in
4 consultation with the Superintendents of the military
5 service academies, shall submit a report to the con-
6 gressional defense committees describing the addi-
7 tional training and education implemented pursuant
8 to paragraph (1).

9 **SEC. 9. INCREASING THE PHYSICAL SECURITY OF MILI-**
10 **TARY INSTALLATIONS.**

11 (a) SURVEY.—Not later than one year after the date
12 of the enactment of this Act, the Secretary of Defense
13 shall conduct a survey of all lodging and living spaces on
14 military installations to identify, replace, or repair locking
15 mechanisms on points of entry, identify areas of installa-
16 tion of closed-circuit television (CCTV) security cameras,
17 and other passive security measures as necessary to in-
18 crease the prevention of crimes, including sexual assault,
19 on military installations.

20 (b) REPORT.—Not later than one year after the date
21 of the enactment of this Act, the Secretary of Defense
22 shall submit to the congressional defense committees a re-
23 port on the results of the survey conducted under sub-
24 section (a).

1 (c) PROGRAM.—Based on the results of the survey
2 conducted under subsection (a), the Secretary of Defense
3 shall carry out a program for increasing the security of
4 all lodging and living spaces on military installations, in-
5 cluding replacing or repairing locking mechanisms on
6 points of entry, installation of CCTV security cameras,
7 and other passive security measures as necessary to in-
8 crease the prevention of crimes, including sexual assault,
9 on military installations.

10 **SEC. 10. EFFECTIVE DATE AND APPLICABILITY.**

11 (a) EFFECTIVE DATE AND APPLICABILITY.—This
12 Act and the amendments made by this Act shall take ef-
13 fect one year after the date of the enactment of this Act,
14 and shall apply with respect to any allegation of charges
15 of an offense specified in subsection (b) of section 2, and
16 not excluded under subsection (c) of section 2, which of-
17 fense occurs on or after such effective date.

18 (b) REVISIONS OF POLICIES AND PROCEDURES.—
19 Any revision of policies and procedures required of the
20 military departments or the Department of Homeland Se-
21 curity as a result of this part and the amendments made
22 by this part shall be completed so as to come into effect
23 together with the coming into effect of this Act and the

1 amendments made by this Act in accordance with sub-
2 section (a).

○