

113TH CONGRESS
1ST SESSION

S. 1041

To amend title 10, United States Code, to afford crime victims' rights to victims of offenses under the Uniform Code of Military Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2013

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 afford crime victims' rights to victims of offenses under the Uniform Code of Military Justice, 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 “Military Crime Vic-
5 tims’ Rights Act of 2013”.

6 **SEC. 2. EXTENSION OF CRIME VICTIMS’ RIGHTS TO VIC-**
7 **TIMS OF OFFENSES UNDER THE UNIFORM**
8 **CODE OF MILITARY JUSTICE.**

9 (a) VICTIMS’ RIGHTS.—

1 (1) IN GENERAL.—Subchapter I of chapter 47
 2 of title 10, United States Code (the Uniform Code
 3 of Military Justice), is amended by adding at the
 4 end the following new section (article):

5 **“§ 806b. Art. 6b. Victims’ rights of victims of offenses**
 6 **under this chapter**

7 “(a) RIGHTS.—Any individual who is the victim of
 8 an offense under this chapter (the Uniform Code of Mili-
 9 tary Justice), regardless of whether such individual is a
 10 member of the Armed Forces (in this section referred to
 11 as a ‘victim of a military crime’), has the following rights:

12 “(1) The right to be reasonably protected from
 13 the accused.

14 “(2) The right to reasonable, accurate, and
 15 timely notice of any public proceeding in an inves-
 16 tigation under section 832 of this title (article 32),
 17 court-martial, involuntary plea hearing, pre-sen-
 18 tencing hearing, or parole hearing involving the of-
 19 fense or of any release or escape of the accused.

20 “(3) The right not to be excluded from any
 21 such public proceeding, referred to in paragraph (2)
 22 unless the military judge, after receiving clear and
 23 convincing evidence, determines that testimony by
 24 the victim would be materially altered if the victim
 25 heard other testimony at that proceeding.

1 “(4) The right to be reasonably heard at any
2 public proceeding referred to in paragraph (2).

3 “(5) The reasonable right to confer with the
4 trial counsel in the case.

5 “(6) The right to full and timely restitution as
6 provided in law.

7 “(7) The right to proceedings free from unrea-
8 sonable delay.

9 “(8) The right to be treated with fairness and
10 with respect for the victim’s dignity and privacy.

11 “(b) RIGHTS AFFORDED.—In any court-martial pro-
12 ceeding involving an offense against a victim of a military
13 crime, the military judge shall ensure that the victim is
14 afforded the rights described in subsection (a). Before
15 making a determination described in subsection (a)(3), the
16 military judge shall make every effort to permit the fullest
17 attendance possible by the victim and shall consider rea-
18 sonable alternatives to the exclusion of the victim from the
19 criminal proceeding. The reasons for any decision denying
20 relief under this subsection shall be clearly stated on the
21 record.

22 “(c) BEST EFFORTS TO ACCORD RIGHTS.—(1) Mili-
23 tary judges, trial and defense counsel, military criminal
24 investigation organizations, services, and personnel, and
25 other members and personnel of the Department of De-

1 fense engaged in the detection, investigation, or prosecu-
2 tion of offenses under this chapter (the Uniform Code of
3 Military Justice) shall make their best efforts to see that
4 victims of military crimes are notified of, and accorded,
5 the rights described in that subsection.

6 “(2) The trial counsel in a case shall advise the victim
7 that the victim can seek the advice of an attorney with
8 respect to the rights described in subsection (a).

9 “(3) Notice of release otherwise required pursuant to
10 this chapter shall not be given if such notice may endanger
11 the safety of any person.

12 “(d) ENFORCEMENT AND LIMITATIONS.—(1) A vic-
13 tim of a military crime, the victim’s lawful representative,
14 and the trial counsel may assert the rights described in
15 subsection (a). A person accused of an offense under this
16 chapter (the Uniform Code of Military Justice) may not
17 obtain any form of relief under this section with respect
18 to such offense.

19 “(2) In a case where the military judge finds that
20 the number of victims makes it impracticable to accord
21 all of the victims the rights described in subsection (a),
22 the military judge shall fashion a reasonable procedure to
23 give effect to this section that does not unduly complicate
24 or prolong the proceedings.

1 “(3) The rights described in subsection (a) shall be
2 asserted in the court-martial in which the accused is being
3 prosecuted for the offense. The military judge shall take
4 up and decide any motion asserting a victim’s right forth-
5 with. If the military judge denies the relief sought, the
6 movant may petition the Court of Criminal Appeals. The
7 Court of Criminal Appeals may issue the writ on the order
8 of a single judge pursuant to the rules of the Court of
9 Criminal Appeals. The Court of Criminal Appeals shall
10 take up and decide such application forthwith within 72
11 hours after the petition has been filed. In no event shall
12 proceedings be stayed or subject to a continuance of more
13 than five days for purposes of enforcing this section. If
14 the Court of Criminal Appeals denies the relief sought,
15 the reasons for the denial shall be clearly stated on the
16 record in a written opinion.

17 “(4) In any appeal in a case under this chapter (the
18 Uniform Code of Military Justice), the Government may
19 assert as error the military judge’s denial of any victim’s
20 right in the proceeding to which the appeal relates.

21 “(5) In no case shall a failure to afford a right under
22 this section provide grounds for a new trial. A victim may
23 make a motion to re-open a plea or sentence only if—

1 “(A) the victim has asserted the right to be
2 heard before or during the proceeding at issue and
3 such right was denied;

4 “(B) the victim petitions the Court of Criminal
5 Appeals for a writ of mandamus within 14 days; and

6 “(C) in the case of a plea, the accused has not
7 pled to the highest offense charged.

8 “(6) Nothing in this section shall be construed to au-
9 thorize a cause of action for damages or to create, to en-
10 large, or to imply any duty or obligation to any victim
11 or other person for the breach of which the United States
12 or any of its officers or employees could be held liable in
13 damages. Nothing in this section shall be construed to im-
14 pair the prosecutorial discretion of a Judge Advocate Gen-
15 eral or any officer under his direction.

16 “(e) CERTAIN VICTIMS.—In the case of a victim of
17 a military crime who is under 18 years of age, incom-
18 petent, incapacitated, or deceased, the legal guardians of
19 the victim or the representatives of the victim’s estate,
20 family members, or any other persons appointed as suit-
21 able by the military judge, may assume the victim’s rights
22 under this section, but in no event shall an accused be
23 named as such guardian or representative.”.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of subchapter I of chapter 47

1 of such title (the Uniform Code of Military Justice)
 2 is amended by adding at the end the following new
 3 item:

“806b. Art. 6b. Victims’ rights of victims of offenses under this chapter.”.

4 (b) PROCEDURES TO PROMOTE COMPLIANCE.—

5 (1) IN GENERAL.—Not later than one year
 6 after the date of the enactment of this Act, the Sec-
 7 retary of Defense shall modify the Manual for
 8 Courts-Martial, and prescribe such other regulations
 9 as the Secretary considers appropriate, to enforce
 10 the rights of victims of military crimes and to ensure
 11 compliance by responsible members of the Armed
 12 Forces and personnel of the Department of Defense
 13 with the obligations specified in section 806b of title
 14 10, United States Code (article 6b of the Uniform
 15 Code of Military Justice), as added by subsection
 16 (a).

17 (2) ELEMENTS.—The modifications and regula-
 18 tions issued pursuant to paragraph (1) shall include
 19 the following:

20 (A) The designation of an administrative
 21 authority within the Department of Defense to
 22 receive and investigate complaints relating to
 23 the provision or violation of the rights of vic-
 24 tims of military crimes.

1 (B) A requirement for a course of training
2 for judge advocates and other appropriate mem-
3 bers of the Armed Forces and personnel of the
4 Department that fail to comply with section
5 806b of title 10, United States Code (article 6b
6 of the Uniform Code of Military Justice), as so
7 added, and otherwise assist such personnel in
8 responding more effectively to the needs of vic-
9 tims of military crimes.

10 (C) Disciplinary sanctions, including sus-
11 pension or termination from employment in the
12 case of employees of the Department of De-
13 fense, for members of the Armed Forces and
14 other personnel of the Department who willfully
15 or wantonly fail to comply with section 806b of
16 title 10, United States Code (article 6b of the
17 Uniform Code of Military Justice), as so added.

18 (D) Mechanisms to ensure that the Sec-
19 retary of Defense shall be the final arbiter of a
20 complaint authorized pursuant to subparagraph
21 (A) by a victim of a military crime that the vic-
22 tim was not afforded the rights provided under
23 section 806b of title 10, United States Code

- 1 (article 6b of the Uniform Code of Military Jus-
- 2 tice), as so added

