

Calendar No. 253

113TH CONGRESS
1ST SESSION**S. 1775**

To improve the sexual assault prevention and response programs and activities of the Department of Defense, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2013

Mrs. McCASKILL (for herself, Ms. AYOTTE, and Mrs. FISCHER) introduced the following bill; which was read the first time

DECEMBER 9, 2013

Read the second time and placed on the calendar

A BILL

To improve the sexual assault prevention and response programs and activities of the Department of Defense, 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 “Victims Protection Act of 2013”.

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—SEXUAL ASSAULT PREVENTION AND RESPONSE

- Sec. 101. Prohibition on service in the Armed Forces by individuals who have been convicted of certain sexual offenses.
- Sec. 102. Temporary administrative reassignment or removal of a member of the Armed Forces on active duty who is accused of committing a sexual assault or related offense.
- Sec. 103. Issuance of regulations applicable to the Coast Guard regarding consideration of request for permanent change of station or unit transfer by victim of sexual assault.
- Sec. 104. Inclusion and command review of information on sexual-related offenses in personnel service records of members of the Armed Forces.
- Sec. 105. Enhanced responsibilities of Sexual Assault Prevention and Response Office for Department of Defense sexual assault prevention and response program.
- Sec. 106. Comprehensive review of adequacy of training for members of the Armed Forces on sexual assault prevention and response.
- Sec. 107. Availability of Sexual Assault Response Coordinators for members of the National Guard and the Reserves.
- Sec. 108. Retention of certain forms in connection with Restricted Reports and Unrestricted Reports on sexual assault involving members of the Armed Forces.
- Sec. 109. Special Victims' Counsel for victims of sexual assault committed by members of the Armed Forces.
- Sec. 110. Sense of Congress on commanding officer responsibility for command climate free of retaliation.
- Sec. 111. Commanding officer action on reports on sexual offenses involving members of the Armed Forces.
- Sec. 112. Department of Defense Inspector General investigation of allegations of retaliatory personnel actions taken in response to making protected communications regarding sexual assault.
- Sec. 113. Advancement of submittal deadline for report of independent panel on assessment of military response systems to sexual assault.
- Sec. 114. Assessment of clemency in the military justice system and of database of alleged offenders of sexual assault as additional duties of independent panel on review and assessment of systems to respond to sexual assault cases.
- Sec. 115. Assessment of provisions and proposed provisions of law on sexual assault prevention and response as additional duties of independent panels for review and assessment of Uniform Code of Military Justice and judicial proceedings of sexual assault cases.
- Sec. 116. Assessment of compensation and restitution of victims of offenses under the Uniform Code of Military Justice as additional duty of independent panel on review and assessment of judicial proceedings of sexual assault cases.
- Sec. 117. Additional enhancements of military department actions on sexual assault prevention and response.
- Sec. 118. Applicability of sexual assault prevention and response and related military justice enhancements to military service academies.

- Sec. 119. Collaboration between the Department of Defense and the Department of Justice in efforts to prevent and respond to sexual assault.
- Sec. 120. Sense of Senate on independent panel on review and assessment on response systems to sexual assault crimes.

TITLE II—RELATED MILITARY JUSTICE MATTERS

- Sec. 201. Elimination of five-year statute of limitations on trial by court-martial for additional offenses involving sex-related crimes.
- Sec. 202. Review of decisions not to refer charges of certain sexual offenses to trial by court-martial.
- Sec. 203. Defense counsel interview of complaining witnesses in presence of trial counsel or outside counsel.
- Sec. 204. Mandatory discharge or dismissal for certain sex-related offenses under the Uniform Code of Military Justice and trial of such offenses by general courts-martial.
- Sec. 205. Limitation on authority of convening authority to modify findings of a court-martial.
- Sec. 206. Participation by complaining witnesses in clemency phase of courts-martial process.
- Sec. 207. Secretary of Defense report on modifications to the Uniform Code of Military Justice to prohibit sexual acts and contacts between military instructors and trainees.
- Sec. 208. Sense of Senate on disposition of charges involving certain sexual misconduct offenses under the Uniform Code of Military Justice through courts-martial.
- Sec. 209. Sense of Senate on the discharge in lieu of court-martial of members of the Armed Forces who commit sexual-related offenses.

TITLE III—OTHER MILITARY JUSTICE AND LEGAL MATTERS

- Sec. 301. Prohibition of retaliation against members of the Armed Forces for reporting a criminal offense.
- Sec. 302. Extension of crime victims' rights to victims of offenses under the Uniform Code of Military Justice.
- Sec. 303. Modification of Manual for Courts-Martial to eliminate factor relating to character and military service of the accused in rule on initial disposition of offenses.
- Sec. 304. Preliminary hearings on alleged offenses under the Uniform Code of Military Justice.

1 **TITLE I—SEXUAL ASSAULT**

2 **PREVENTION AND RESPONSE**

3 **SEC. 101. PROHIBITION ON SERVICE IN THE ARMED**

4 **FORCES BY INDIVIDUALS WHO HAVE BEEN**

5 **CONVICTED OF CERTAIN SEXUAL OFFENSES.**

6 (a) PROHIBITION.—

1 (1) IN GENERAL.—Chapter 37 of title 10,
 2 United States Code, is amended adding at the end
 3 the following new section:

4 **“§ 657. Prohibition on service in the armed forces by**
 5 **individuals convicted of certain sexual of-**
 6 **fenses**

7 “(a) PROHIBITION ON COMMISSIONING OR ENLIST-
 8 MENT.—A person who has been convicted of an offense
 9 specified in subsection (b) under Federal or State law may
 10 not be processed for commissioning or permitted to enlist
 11 in the armed forces.

12 “(b) COVERED OFFENSES.—An offense specified in
 13 this subsection is any felony offense as follows:

14 “(1) Rape or sexual assault.

15 “(2) Forcible sodomy.

16 “(3) Incest.

17 “(4) An attempt to commit an offense specified
 18 in paragraph (1) through (3), as punishable under
 19 applicable Federal or State law.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
 21 tions at the beginning of chapter 37 of such title is
 22 amended by adding at the end the following new
 23 item:

“657. Prohibition on service in the armed forces by individuals convicted of cer-
 tain sexual offenses.”.

1 (b) REPEAL OF SUPERSEDED PROHIBITION.—Sec-
 2 tion 523 of the National Defense Authorization Act for
 3 Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1723;
 4 10 U.S.C. 504 note) is repealed.

5 **SEC. 102. TEMPORARY ADMINISTRATIVE REASSIGNMENT**
 6 **OR REMOVAL OF A MEMBER OF THE ARMED**
 7 **FORCES ON ACTIVE DUTY WHO IS ACCUSED**
 8 **OF COMMITTING A SEXUAL ASSAULT OR RE-**
 9 **LATED OFFENSE.**

10 (a) IN GENERAL.—Chapter 39 of title 10, United
 11 States Code, is amended by inserting after section 673 the
 12 following new section:

13 **“§ 674. Temporary administrative reassignment or re-**
 14 **moval of a member on active duty ac-**
 15 **cused of committing a sexual assault or**
 16 **related offense**

17 “(a) GUIDANCE FOR TIMELY CONSIDERATION AND
 18 ACTION.—The Secretary concerned may provide guidance,
 19 within guidelines provided by the Secretary of Defense, for
 20 commanders regarding their authority to make a timely
 21 determination, and to take action, regarding whether a
 22 member of the armed forces serving on active duty who
 23 is alleged to have committed an offense under section 920,
 24 920a, 920b, 920c, or 925 of this title (article 120, 120a,
 25 120b, 120c, or 125 of the Uniform Code of Military Jus-

1 tice) or an attempt to commit such an offense as punish-
 2 able under section 880 of this title (article 80 of the Uni-
 3 form Code of Military Justice) should be temporarily reas-
 4 signed or removed from a position of authority or from
 5 an assignment, not as a punitive measure, but solely for
 6 the purpose of maintaining good order and discipline with-
 7 in the member's unit.

8 “(b) TIME FOR DETERMINATION.—A determination
 9 described in subsection (a) may be made at any time after
 10 receipt of notification of an unrestricted report of a sexual
 11 assault or other sex-related offense that identifies the
 12 member as an alleged perpetrator.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 at the beginning of chapter 39 of such title is amended
 15 by inserting after the item relating to section 673 the fol-
 16 lowing new item:

“674. Temporary administrative reassignment or removal of a member on active
 duty accused of committing a sexual assault or related of-
 fense.”.

17 (c) ADDITIONAL TRAINING REQUIREMENT FOR COM-
 18 MANDERS.—The Secretary of Defense shall provide for in-
 19 clusion of information and discussion regarding the avail-
 20 ability and use of the authority described by section 674
 21 of title 10, United States Code, as added by subsection
 22 (a), as part of the training for new and prospective com-
 23 manders at all levels of command required by section

1 585(b) of the National Defense Authorization Act for Fis-
 2 cal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note).

3 **SEC. 103. ISSUANCE OF REGULATIONS APPLICABLE TO THE**
 4 **COAST GUARD REGARDING CONSIDERATION**
 5 **OF REQUEST FOR PERMANENT CHANGE OF**
 6 **STATION OR UNIT TRANSFER BY VICTIM OF**
 7 **SEXUAL ASSAULT.**

8 Section 673(b) of title 10, United States Code, is
 9 amended by striking “The Secretaries of the military de-
 10 partments” and inserting “The Secretary concerned”.

11 **SEC. 104. INCLUSION AND COMMAND REVIEW OF INFORMA-**
 12 **TION ON SEXUAL-RELATED OFFENSES IN**
 13 **PERSONNEL SERVICE RECORDS OF MEM-**
 14 **BERS OF THE ARMED FORCES.**

15 (a) INFORMATION ON SUBSTANTIATED REPORTS ON
 16 SEXUAL-RELATED OFFENSES.—

17 (1) IN GENERAL.—If a complaint of a sexual-
 18 related offense is made against a member of the
 19 Armed Forces and the complaint is substantiated
 20 and the member is convicted by court-martial or re-
 21 ceives non-judicial punishment or administrative ac-
 22 tion for such sexual-related offense, a notation to
 23 that effect shall be placed in the personnel service
 24 record of the member, regardless of the member’s
 25 grade.

1 (2) PURPOSE.—The purpose of the inclusion of
2 information in personnel service records under para-
3 graph (1) is to alert commanders to the members of
4 their command who have received courts-martial
5 conviction, non-judicial punishment, or administra-
6 tive action for sexual-related offenses in order to re-
7 duce the likelihood that repeat offenses will escape
8 the notice of commanders.

9 (b) LIMITATION ON PLACEMENT.—A notation under
10 subsection (a) may not be placed in the restricted section
11 of the personnel service record of a member.

12 (c) CONSTRUCTION.—Nothing in subsection (a) or
13 (b) may be construed to prohibit or limit the capacity of
14 a member of the Armed Forces to challenge or appeal the
15 placement of a notation, or location of placement of a no-
16 tation, in the member's personnel service record in accord-
17 ance with procedures otherwise applicable to such chal-
18 lenges or appeals.

19 (d) SUBSTANTIATED COMPLAINTS.—For purposes of
20 implementing this section, the Secretary of Defense shall
21 use the definition of substantiated developed for purposes
22 of the annual report on sexual assaults involving members
23 of the Armed Forces prepared under section 1631 of the
24 Ike Skelton National Defense Authorization Act for Fiscal
25 Year 2011 (10 U.S.C. 1561 note).

1 (e) COMMAND REVIEW OF HISTORY OF SEXUAL-RE-
2 LATED OFFENSES OF MEMBERS UPON ASSIGNMENT OR
3 TRANSFER TO NEW UNIT.—

4 (1) REVIEW REQUIRED.—Under uniform regu-
5 lations prescribed by the Secretary of Defense, the
6 commanding officer of a facility, installation, or unit
7 to which a member of the Armed Forces described
8 in paragraph (2) is permanently assigned or trans-
9 ferred shall review the history of substantiated sex-
10 ual offenses of the member in order to familiarize
11 such officer with such history of the member.

12 (2) COVERED MEMBERS.—A member of the
13 Armed Forces described in this paragraph is a mem-
14 ber of the Armed Forces who, at the time of assign-
15 ment or transfer as described in paragraph (1), has
16 a history of one or more substantiated sexual of-
17 fenses as documented in the personnel service record
18 of such member or such other records or files as the
19 Secretary shall specify in the regulations prescribed
20 under paragraph (1).

1 **SEC. 105. 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. 106. COMPREHENSIVE REVIEW OF ADEQUACY OF**
 12 **TRAINING FOR MEMBERS OF THE ARMED**
 13 **FORCES ON SEXUAL ASSAULT PREVENTION**
 14 **AND RESPONSE.**

15 (a) COMPREHENSIVE REVIEW REQUIRED.—

16 (1) IN GENERAL.—The Secretary of Defense
 17 shall carry out a review of the adequacy of the train-
 18 ing provided members of the Armed Forces on sex-
 19 ual assault prevention and response.

20 (2) RESPONSIVE ACTION.—Upon completion of
 21 the review under paragraph (1), the Secretary shall
 22 prescribe in regulations such modifications of the
 23 training provided members of the Armed Forces on
 24 sexual assault prevention and response as the Sec-
 25 retary considers appropriate to address any inad-

1 equacies in such training identified during the re-
2 view.

3 (b) REVIEW OF PERSONNEL RESPONSIBLE FOR SEX-
4 UAL ASSAULT PREVENTION AND RESPONSE ACTIVI-
5 TIES.—

6 (1) REVIEW OF PERSONNEL.—The Secretary
7 shall carry out a review of the adequacy of the train-
8 ing, qualifications, and experience of each member of
9 the Armed Forces and civilian employee of the De-
10 partment of Defense who is assigned to a position
11 that includes responsibility for sexual assault preven-
12 tion and response within the Armed Forces for the
13 discharge of such responsibility.

14 (2) ASSESSMENT OF CERTAIN ELEMENTS OF
15 PREVENTION AND RESPONSE PROGRAM.—In car-
16 rying out the review under paragraph (1), the Sec-
17 retary shall also conduct an assessment of the ade-
18 quacy of the training and certifications required for
19 certain such personnel by section 584 of the Na-
20 tional Defense Authorization Act for Fiscal Year
21 2012 (Public Law 112–81; 125 Stat. 1433; 10
22 U.S.C. 1561 note).

23 (3) RESPONSIVE PERSONNEL ACTIONS.—If as a
24 result of the review under paragraph (1) the Sec-
25 retary determines that any member or civilian em-

1 ployee described in that paragraph does not have the
2 training, qualifications, or experience required to
3 discharge the responsibility referred to in that para-
4 graph, the Secretary shall take appropriate respon-
5 sive actions, including—

6 (A) re-training or re-certification of such
7 member or civilian employee; or

8 (B) reassigning such member or civilian
9 employee to duties other than sexual assault
10 prevention and response and replacing such
11 member or civilian with a member or civilian
12 employee qualified to discharge such responsi-
13 bility.

14 (4) RESPONSIVE ACTIONS REGARDING PROGRAM
15 ELEMENTS.—Upon completion of the review under
16 paragraph (1), the Secretary shall prescribe in regu-
17 lations the following:

18 (A) Appropriate minimum levels of train-
19 ing, qualifications, and experience for members
20 of the Armed Forces and civilian personnel of
21 the Department for the discharge of responsibil-
22 ities for sexual assault prevention and response
23 within the Armed Forces.

24 (B) Such requirements for improvements
25 in the training provided to members and civilian

1 employees referred to in subparagraph (A) as
2 the Secretary considers appropriate, including
3 improvements to the training and certifications
4 referred to in paragraph (2), in order to ensure
5 that such members and civilian employees are
6 properly trained and certified to discharge re-
7 sponsibilities for sexual assault prevention and
8 response within the Armed Forces.

9 (C) Such requirements for improvements
10 in the processes used to select and assign per-
11 sonnel to sexual assault prevention and re-
12 sponse billets as the Secretary considers appro-
13 priate to ensure that the highest caliber can-
14 didates are selected and assigned to such bil-
15 lets.

16 (5) REPORT REQUIRED.—Not later than 120
17 days after the date of the enactment of this Act, the
18 Secretary shall submit to the Committees on Armed
19 Services of the Senate and the House of Representa-
20 tives a report setting forth the following:

21 (A) The findings and responsive action
22 taken based on review under paragraph (1).

23 (B) Recommendations of the Secretary for
24 such legislative action as the Secretary con-
25 siders appropriate—

1 (i) to improve training provided mem-
 2 bers of the Armed Forces on sexual assault
 3 and prevention; and

4 (ii) to ensure that sexual assault pre-
 5 vention and response positions are consid-
 6 ered career enhancing assignments.

7 **SEC. 107. AVAILABILITY OF SEXUAL ASSAULT RESPONSE**
 8 **COORDINATORS FOR MEMBERS OF THE NA-**
 9 **TIONAL GUARD AND THE RESERVES.**

10 Section 584(a) of the National Defense Authorization
 11 Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat.
 12 1433; 10 U.S.C. 1561 note) is amended—

13 (1) by redesignating paragraph (2) as para-
 14 graph (3); and

15 (2) by inserting after paragraph (1) the fol-
 16 lowing new paragraph (2):

17 “(2) AVAILABILITY FOR MEMBERS OF THE NA-
 18 TIONAL GUARD AND RESERVES.—The Secretary of
 19 the military department concerned shall ensure that
 20 each member of the National Guard or Reserve
 21 who—

22 “(A) is the victim of a sexual assault dur-
 23 ing the performance of duties as a member of
 24 the National Guard or Reserve; or

1 “(B) is the victim of a sexual assault com-
 2 mitted by a member of the National Guard or
 3 Reserves,
 4 has access to a Sexual Assault Response Coordinator
 5 not later than two business days following the date
 6 of such member’s request for assistance from a Sex-
 7 ual Assault Response Coordinator.”.

8 **SEC. 108. RETENTION OF CERTAIN FORMS IN CONNECTION**
 9 **WITH RESTRICTED REPORTS AND UNRE-**
 10 **STRICTED REPORTS ON SEXUAL ASSAULT IN-**
 11 **VOLVING MEMBERS OF THE ARMED FORCES.**

12 (a) REQUIREMENT FOR RETENTION.—Subsection (a)
 13 of section 577 of the National Defense Authorization Act
 14 for Fiscal Year 2013 (Public Law 112–239; 126 Stat.
 15 1762; 10 U.S.C. 1561 note) is amended—

16 (1) by striking “At the request of a member of
 17 the Armed Forces who files a Restricted Report on
 18 an incident of sexual assault involving the member,
 19 the Secretary of Defense shall” and inserting “The
 20 Secretary of Defense shall”; and

21 (2) by striking “the Restricted Report” and in-
 22 serting “a Restricted Report or Unrestricted Report
 23 on an incident of sexual assault involving a member
 24 of the Armed Forces”.

1 (b) CONFORMING AMENDMENT.—The heading of
 2 such section is amended to read as follows:

3 **“SEC. 577. RETENTION OF CERTAIN FORMS IN CONNECTION**
 4 **WITH RESTRICTED REPORTS AND UNRE-**
 5 **STRICTED REPORTS ON SEXUAL ASSAULT IN-**
 6 **VOLVING MEMBERS OF THE ARMED**
 7 **FORCES.”.**

8 **SEC. 109. SPECIAL VICTIMS’ COUNSEL FOR VICTIMS OF**
 9 **SEXUAL ASSAULT COMMITTED BY MEMBERS**
 10 **OF THE ARMED FORCES.**

11 (a) SPECIAL VICTIMS’ COUNSEL FOR CERTAIN VIC-
 12 TIMS OF SEXUAL ASSAULT COMMITTED BY MEMBERS OF
 13 THE ARMED FORCES.—

14 (1) IN GENERAL.—Not later than 180 days
 15 after the date of the enactment of this Act, the Sec-
 16 retaries of the military departments shall each im-
 17 plement a program on the provision of a Special Vic-
 18 tims’ Counsel to members of the Armed Forces, and
 19 dependents of members, who are victims of a sexual
 20 assault committed by a member of the Armed
 21 Forces.

22 (2) QUALIFICATION.—An individual may not be
 23 designated as a Special Victims’ Counsel under this
 24 subsection unless the individual is—

1 (A) a judge advocate who is a graduate of
2 an accredited law school or is a member of the
3 bar of a Federal court or the highest court of
4 a State; and

5 (B) certified as competent to be designated
6 as a Special Victims' Counsel by the Judge Ad-
7 vocate General of the Armed Force of which the
8 individual is a member.

9 (3) DUTIES.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (C), the duties of a Special Victims'
12 Counsel shall include the provision of legal ad-
13 vice and assistance to a victim described in
14 paragraph (1) in connection with criminal and
15 civil legal matters related to the sexual assault
16 committed against the victim, including the fol-
17 lowing:

18 (i) Legal advice and assistance re-
19 garding any potential criminal liability of
20 the victim.

21 (ii) Legal advice and assistance re-
22 garding the victim's responsibility to tes-
23 tify, and other duties to the court.

1 (iii) Legal advice regarding the poten-
2 tial for civil litigation against other parties
3 (other than the Department of Defense).

4 (iv) Legal advice regarding any pro-
5 ceedings of the military justice process
6 which the victim may observe.

7 (v) Legal advice and assistance re-
8 garding any proceeding of the military jus-
9 tice process in which the victim may par-
10 ticipate as a witness or other party.

11 (vi) Legal advice and assistance re-
12 garding available military or civilian re-
13 straining or protective orders.

14 (vii) Legal advice and assistance re-
15 garding available military and veteran ben-
16 efits.

17 (viii) Legal assistance in personal civil
18 legal matters in connection with the sexual
19 assault in accordance with section 1044 of
20 title 10, United States Code.

21 (ix) Such other legal advice and as-
22 sistance as the Secretary of the military
23 department concerned shall specify for
24 purposes of the program implemented
25 under this subsection.

1 (B) NATURE OF RELATIONSHIP.—The re-
 2 lationship between a Special Victims’ Counsel
 3 and a victim in the provision of legal advice and
 4 assistance shall be the relationship between an
 5 attorney and client.

6 (b) ASSISTANCE AND REPORTING.—

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

9 (A) by redesignating subsection (b) as sub-
 10 section (c); and

11 (B) by inserting after subsection (a) the
 12 following new subsection (b):

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

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

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

1 “(B) An attempt to commit an offense specified
2 in subparagraph (A) as punishable under section
3 880 of this title (article 80 of the Uniform Code of
4 Military Justice).

5 “(3) A member of the armed forces or dependent who
6 is the victim of sexual assault described in paragraph (2)
7 shall be informed of the availability of assistance under
8 paragraph (1) as soon as the member or dependent seeks
9 assistance from a Sexual Assault Response Coordinator,
10 a Sexual Assault Victim Advocate, a military criminal in-
11 vestigator, a victim/witness liaison, a trial counsel, health
12 care providers, or any other personnel designated by the
13 Secretary of the military department concerned for pur-
14 poses of this paragraph. The member or dependent shall
15 also be informed that the assistance of a Special Victims’
16 Counsel under paragraph (1) is optional and may be de-
17 clined, in whole or in part, at any time.

18 “(4) Assistance of a Special Victims’ Counsel under
19 paragraph (1) shall be available to a member or dependent
20 regardless of whether the member or dependent elects un-
21 restricted or restricted (confidential) reporting of the sex-
22 ual assault.”.

23 (2) REPORTING.—Subsection (c) of such sec-
24 tion, as redesignated by paragraph (1)(A) of this
25 subsection, is further amended in paragraph (2)—

1 (A) by redesignating subparagraph (C) as
 2 subparagraph (D); and

3 (B) by inserting after subparagraph (B)
 4 the following new subparagraph (C):

5 “(C) A Special Victims’ Counsel.”.

6 (c) CONFORMING AMENDMENTS TO AUTHORITY ON
 7 SARC, SAVA, AND RELATED ASSISTANCE.—Subsection
 8 (a) of such section is amended—

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

11 (2) in paragraph (2)—

12 (A) by inserting “a Special Victims’ Coun-
 13 sel,” after “a Sexual Assault Victim Advocate,”;
 14 and

15 (B) by striking “or a trial counsel” and in-
 16 serting “a trial counsel, health care providers,
 17 or any other personnel designated by the Sec-
 18 retary of the military department concerned for
 19 purposes of this paragraph”.

20 (d) CONFORMING AND CLERICAL AMENDMENTS.—

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

1 **“§ 1565b. Victims of sexual assault: access to legal as-**
 2 **sistance and services of Sexual Assault**
 3 **Coordinators, Sexual Assault Victim Ad-**
 4 **vocates, and Special Victims’ Counsels”.**

5 (2) TABLE OF SECTIONS.—The table of sections
 6 at the beginning of chapter 80 of such title is
 7 amended by striking the item relating to section
 8 1565b and inserting the following new item:

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

9 **SEC. 110. SENSE OF CONGRESS ON COMMANDING OFFICER**
 10 **RESPONSIBILITY FOR COMMAND CLIMATE**
 11 **FREE OF RETALIATION.**

12 It is the sense of Congress that—

13 (1) commanding officers are responsible for es-
 14 tablishing a command climate in which sexual as-
 15 sault allegations are properly managed and fairly
 16 evaluated and a victim can report criminal activity,
 17 including sexual assault, without fear of retaliation,
 18 including ostracism and group pressure from other
 19 members of the command;

20 (2) the failure of commanding officers to main-
 21 tain such a command climate is an appropriate basis
 22 for relief from their command positions; and

23 (3) senior officers should evaluate subordinate
 24 commanding officers on their performance in estab-

1 lishing a command climate as described in para-
 2 graph (1) during the regular periodic counseling and
 3 performance appraisal process prescribed by the
 4 Armed Force concerned for inclusion in the systems
 5 of records maintained and used for assignment and
 6 promotion selection boards.

7 **SEC. 111. COMMANDING OFFICER ACTION ON REPORTS ON**
 8 **SEXUAL OFFENSES INVOLVING MEMBERS OF**
 9 **THE ARMED FORCES.**

10 (a) IMMEDIATE ACTION REQUIRED.—A commanding
 11 officer who receives a report of a sexual-related offense
 12 involving a member of the Armed Forces in the chain of
 13 command of such officer shall act upon the report in ac-
 14 cordance with subsection (b) immediately after receipt of
 15 the report by the commanding officer.

16 (b) ACTION REQUIRED.—The action required by this
 17 subsection with respect to a report described in subsection
 18 (a) is the referral of the report to the military criminal
 19 investigation organization with responsibility for inves-
 20 tigating that offense of the military department concerned
 21 or such other investigation service of the military depart-
 22 ment concerned as the Secretary of the military depart-
 23 ment concerned may specify for purposes of this section.

1 **SEC. 112. DEPARTMENT OF DEFENSE INSPECTOR GENERAL**
2 **INVESTIGATION OF ALLEGATIONS OF RETAL-**
3 **IATORY PERSONNEL ACTIONS TAKEN IN RE-**
4 **SPONSE TO MAKING PROTECTED COMMU-**
5 **NICATIONS REGARDING SEXUAL ASSAULT.**

6 Section 1034(c)(2)(A) of title 10, United States
7 Code, is amended by striking “sexual harassment or” and
8 inserting “rape, sexual assault, or other sexual misconduct
9 in violation of sections 920 through 920c of this title (arti-
10 cles 120 through 120c of the Uniform Code of Military
11 Justice), sexual harassment, or”.

12 **SEC. 113. ADVANCEMENT OF SUBMITTAL DEADLINE FOR**
13 **REPORT OF INDEPENDENT PANEL ON AS-**
14 **SESSMENT OF MILITARY RESPONSE SYSTEMS**
15 **TO SEXUAL ASSAULT.**

16 Section 576(c)(1)(B) of the National Defense Au-
17 thorization Act for Fiscal Year 2013 (Public Law 112–
18 239; 126 Stat. 1759) is amended by striking “Eighteen
19 months” and inserting “Twelve months”.

1 **SEC. 114. ASSESSMENT OF CLEMENCY IN THE MILITARY**
 2 **JUSTICE SYSTEM AND OF DATABASE OF AL-**
 3 **LEGED OFFENDERS OF SEXUAL ASSAULT AS**
 4 **ADDITIONAL DUTIES OF INDEPENDENT**
 5 **PANEL ON REVIEW AND ASSESSMENT OF SYS-**
 6 **TEMS TO RESPOND TO SEXUAL ASSAULT**
 7 **CASES.**

8 Paragraph (1) of Section 576(d) of the National De-
 9 fense Authorization Act for Fiscal Year 2013 (Public Law
 10 112–239; 126 Stat. 1760) is amended—

11 (1) in subparagraph (B), by adding at the end
 12 the following new sentence: “The comparison shall
 13 also include an assessment of the opportunities for
 14 clemency provided in the military and civilian sys-
 15 tems, the appropriateness of clemency proceedings in
 16 the military system, the manner in which clemency
 17 is used in the military system, and whether clemency
 18 in the military justice system could be reserved until
 19 the end of the military appeals process.”;

20 (2) by redesignating subparagraph (I) as sub-
 21 paragraph (J); and

22 (3) by inserting after subparagraph (H) the fol-
 23 lowing new subparagraph (I):

24 “(I) An assessment of the means by which
 25 the name, if known, and other necessary identi-
 26 fying information of an alleged offender that is

collected as part of a restricted report of a sexual assault could be compiled into a protected, searchable database accessible only to military criminal investigators, Sexual Assault Response Coordinators, or other appropriate personnel only for the purposes of identifying individuals who are subjects of multiple accusations of sexual assault and encouraging victims to make an unrestricted report of sexual assault in those cases in order to facilitate increased prosecutions, particularly of serial offenders. The assessment should include an evaluation of the appropriate content to be included in the database, as well as the best means to maintain the privacy of those making a restricted report.”.

SEC. 115. ASSESSMENT OF PROVISIONS AND PROPOSED PROVISIONS OF LAW ON SEXUAL ASSAULT PREVENTION AND RESPONSE AS ADDITIONAL DUTIES OF INDEPENDENT PANELS FOR REVIEW AND ASSESSMENT OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(a) ASSESSMENT AS ADDITIONAL DUTIES OF PANEL ON RESPONSE SYSTEMS TO SEXUAL ASSAULT CRIMES.— Paragraph (1) of section 576(d) of the National Defense

1 Authorization Act for Fiscal Year 2013 (Public Law 112–
2 239; 126 Stat. 1760), as amended by section 114 of this
3 Act, is further amended—

4 (1) by redesignating subparagraph (J) as sub-
5 paragraph (L); and

6 (2) by inserting after subparagraph (I) the fol-
7 lowing new subparagraphs:

8 “(J) An assessment of the effectiveness of
9 the provisions of law on sexual assault preven-
10 tion and response in the Victims Protection Act
11 of 2013, including the provisions establishing or
12 amending requirements and authorities relating
13 to sexual assault prevention and response.

14 “(K) An assessment of the potential effec-
15 tiveness of the provisions of law on sexual as-
16 sault prevention and response offered by Sen-
17 ators who are members of the Committee on
18 Armed of the Senate in the markup by the
19 Committee of the Bill to enact the National De-
20 fense Authorization Act for Fiscal Year 2014,
21 and not adopted by the Committee during that
22 markup for that Bill, including the provisions
23 seeking to establish or amend requirements and
24 authorities relating to sexual assault prevention
25 and response.”.

1 (b) ASSESSMENT AS ADDITIONAL DUTIES OF PANEL
2 ON JUDICIAL PROCEEDINGS.—Paragraph (2) of such sec-
3 tion is amended—

4 (1) by redesignating subparagraph (J) as sub-
5 paragraph (L); and

6 (2) by inserting after subparagraph (I) the fol-
7 lowing new subparagraphs:

8 “(J) Monitor and assess the implementa-
9 tion of the provisions of law on judicial pro-
10 ceedings in connection with sexual assault in
11 the Victims Protection Act of 2013, including
12 provisions amending chapter 47 of title 10,
13 United States Code (the Uniform Code of Mili-
14 tary Justice), and provisions establishing or
15 amending other requirements and authorities
16 relating to such judicial proceedings.

17 “(K) Assess the potential effectiveness of
18 the provisions of law on judicial proceedings on
19 sexual assault offered by Senators who are
20 members of the Committee on Armed of the
21 Senate in the markup by the Committee of the
22 Bill to enact the National Defense Authoriza-
23 tion Act for Fiscal Year 2014, and not adopted
24 by the Committee during that markup for that
25 Bill, including provisions seeking to amend

1 chapter 47 of title 10, United States Code (the
2 Uniform Code of Military Justice), and provi-
3 sions seeking to establish or amend other re-
4 quirements and authorities relating to such ju-
5 dicial proceedings.”.

6 (c) TRANSMITTAL OF PROVISIONS OFFERED BUT
7 NOT ADOPTED.—The Chairman and Ranking Member of
8 the Committee on Armed Services of the Senate shall
9 jointly transmit to the independent panels established pur-
10 suant to paragraphs (1) and (2) of section 576(a) of the
11 National Defense Authorization Act for Fiscal Year 2013
12 (126 Stat. 1758) the applicable provisions of law offered
13 by Senators who are members of the Committee on Armed
14 of the Senate in the markup by the Committee of the Bill
15 to enact the National Defense Authorization Act for Fiscal
16 Year 2014, and not adopted by the Committee during that
17 markup for that Bill, for purposes of the discharge by
18 such panels of the additional duties arising under the
19 amendments made by subsections (a) and (b).

1 **SEC. 116. ASSESSMENT OF COMPENSATION AND RESTITU-**
 2 **TION OF VICTIMS OF OFFENSES UNDER THE**
 3 **UNIFORM CODE OF MILITARY JUSTICE AS**
 4 **ADDITIONAL DUTY OF INDEPENDENT PANEL**
 5 **ON REVIEW AND ASSESSMENT OF JUDICIAL**
 6 **PROCEEDINGS OF SEXUAL ASSAULT CASES.**

7 Paragraph (2) of section 576(d) of the National De-
 8 fense Authorization Act for Fiscal Year 2013 (Public Law
 9 112–239; 126 Stat. 1761), as amended by section 115(b)
 10 of this Act, is further amended—

11 (1) by redesignating subparagraph (L) as sub-
 12 paragraph (M); and

13 (2) by inserting after subparagraph (K) the fol-
 14 lowing new subparagraph (L):

15 “(L) Assess the adequacy of the provision
 16 of compensation and restitution for victims of
 17 offenses under chapter 47, of title 10, United
 18 States Code (the Uniform Code of Military Jus-
 19 tice), and develop recommendations on expand-
 20 ing such compensation and restitution, includ-
 21 ing consideration of the options as follows:

22 “(i) Providing the forfeited wages of
 23 incarcerated members of the Armed Forces
 24 to victims of offenses as compensation.

25 “(ii) Including bodily harm among the
 26 injuries meriting compensation for redress

1 under section 939 of title 10, United
2 States Code (article 139 of the Uniform
3 Code of Military Justice).

4 “(iii) Requiring restitution by mem-
5 bers of the Armed Forces to victims of
6 their offenses upon the direction of a
7 court-martial.”.

8 **SEC. 117. ADDITIONAL ENHANCEMENTS OF MILITARY DE-**
9 **PARTMENT ACTIONS ON SEXUAL ASSAULT**
10 **PREVENTION AND RESPONSE.**

11 (a) **ADDITIONAL DUTY OF SPECIAL VICTIMS’ COUN-**
12 **SEL.**—In addition to the duties specified in section
13 109(a)(3), a Special Victims’ Counsel designated under
14 section 539 shall provide advice to victims of sexual as-
15 sault on the advantages and disadvantages of prosecution
16 of the offense concerned by court-martial or by a civilian
17 court with jurisdiction over the offense before such victims
18 express their preference as to the prosecution of the of-
19 fense under subsection (b).

20 (b) **CONSULTATION WITH VICTIMS REGARDING**
21 **PREFERENCE IN PROSECUTION OF CERTAIN SEXUAL OF-**
22 **FENSES.**—

23 (1) **IN GENERAL.**—The Secretaries of the mili-
24 tary departments shall each establish a process to
25 ensure consultation with the victim of a covered sex-

1 ual offense that occurs in the United States with re-
2 spect to the victim's preference as to whether the of-
3 fense should be prosecuted by court-martial or by a
4 civilian court with jurisdiction over the offense.

5 (2) WEIGHT AFFORDED PREFERENCE.—The
6 preference expressed by a victim under paragraph
7 (1) with respect to the prosecution of an offense,
8 while not binding, should be afforded great weight in
9 the determination whether to prosecute the offense
10 by court-martial or by a civilian court.

11 (3) NOTICE TO VICTIM OF LACK OF CIVILIAN
12 CRIMINAL PROSECUTION AFTER PREFERENCE FOR
13 SUCH PROSECUTION.—In the event a victim ex-
14 presses a preference under paragraph (1) in favor of
15 prosecution of an offence by civilian court and the
16 civilian authorities determine to decline prosecution,
17 or defer to prosecution by court-martial, the victim
18 shall be promptly notified of that determination.

19 (c) PERFORMANCE APPRAISALS OF MEMBERS OF
20 THE ARMED FORCES.—

21 (1) APPRAISALS OF ALL MEMBERS ON COMPLI-
22 ANCE WITH SEXUAL ASSAULT PREVENTION AND RE-
23 SPONSE PROGRAMS.—The Secretaries of the military
24 departments shall each ensure that the written per-
25 formance appraisals of members of the Armed

1 Forces (whether officers or enlisted members) under
 2 the jurisdiction of such Secretary include an assess-
 3 ment of the extent to which each such member sup-
 4 ports the sexual assault prevention and response
 5 program of the Armed Force concerned.

6 (2) PERFORMANCE APPRAISALS OF COM-
 7 MANDING OFFICERS.—The Secretaries of the mili-
 8 tary departments shall each ensure that the per-
 9 formance appraisals of commanding officers under
 10 the jurisdiction of such Secretary indicate the extent
 11 to which each such commanding officer has or has
 12 not established a command climate in which—

13 (A) allegations of sexual assault are prop-
 14 erly managed and fairly evaluated; and

15 (B) a victim can report criminal activity,
 16 including sexual assault, without fear of retalia-
 17 tion, including ostracism and group pressure
 18 from other members of the command.

19 (d) COMMAND CLIMATE ASSESSMENTS FOLLOWING
 20 INCIDENTS OF CERTAIN SEXUAL OFFENSES.—

21 (1) ASSESSMENTS REQUIRED.—The Secretaries
 22 of the military departments shall each establish a
 23 process whereby a command climate assessment is
 24 performed following an incident involving a covered
 25 sexual offense for each of the command of the ac-

1 cused and the command of the victim. If the accused
 2 and the victim are within the same command, only
 3 a single climate assessment is required. The process
 4 shall ensure the timely completion of command cli-
 5 mate assessments for provision to military criminal
 6 investigation organizations and commanders pursu-
 7 ant to paragraph (2).

8 (2) PROVISION TO MILITARY CRIMINAL INVES-
 9 TIGATION ORGANIZATIONS AND COMMANDERS.—A
 10 command climate assessment performed pursuant to
 11 paragraph (1) shall be provided to the following:

12 (A) The military criminal investigation or-
 13 ganization conducting the investigation of the
 14 offense concerned.

15 (B) The commander next higher in the
 16 chain of command of the command covered by
 17 the climate assessment.

18 (e) CONFIDENTIAL REVIEW OF CHARACTERIZATION
 19 OF TERMS OF DISCHARGE OF VICTIMS OF SEXUAL OF-
 20 FENSES.—

21 (1) IN GENERAL.—The Secretaries of the mili-
 22 tary departments shall each establish a confidential
 23 process, through boards for the correction of mili-
 24 tary records of the military department concerned,
 25 by which an individual who was the victim of a cov-

1 ered sexual offense during service in the Armed
 2 Forces may challenge, on the basis of being the vic-
 3 tim of such an offense, the terms or characterization
 4 of the individual's discharge or separation from the
 5 Armed Forces.

6 (2) CONSIDERATION OF INDIVIDUAL EXPERI-
 7 ENCES IN CONNECTION WITH OFFENSES.—In decid-
 8 ing whether to modify the terms or characterization
 9 of an individual's discharge or separation pursuant
 10 to the process required by paragraph (1), the Sec-
 11 retary of the military department concerned shall in-
 12 struct boards to give due consideration to the psy-
 13 chological and physical aspects of the individual's ex-
 14 perience in connection with the offense concerned,
 15 and to what bearing such experience may have had
 16 on the circumstances surrounding the individual's
 17 discharge or separation from the Armed Forces.

18 (3) PRESERVATION OF CONFIDENTIALITY.—
 19 Documents considered and decisions rendered pursu-
 20 ant to the process required by paragraph (1) shall
 21 not be made available to the public, except with the
 22 consent of the individual concerned.

23 (f) COVERED SEXUAL OFFENSE DEFINED.—In sub-
 24 sections (a) through (e), the term “covered sexual offense”
 25 means any of the following:

1 (1) Rape or sexual assault under subsection (a)
2 or (b) of section 920 of title 10, United States Code
3 (article 120 of the Uniform Code of Military Jus-
4 tice).

5 (2) Forcible sodomy under section 925 of title
6 10, United States Code (article 125 of the Uniform
7 Code of Military Justice).

8 (3) An attempt to commit an offense specified
9 in paragraph (1) or (2) as punishable under section
10 880 of title 10, United States Code (article 80 of the
11 Uniform Code of Military Justice).

12 (g) MODIFICATION OF MILITARY RULES OF EVI-
13 DENCE RELATING TO ADMISSIBILITY OF GENERAL MILI-
14 TARY CHARACTER TOWARD PROBABILITY OF INNO-
15 CENCE.—Not later than 180 days after the date of the
16 enactment of this Act, Rule 404(a) of the Military Rules
17 of Evidence shall be modified to clarify that the general
18 military character of an accused is not admissible for the
19 purpose of showing the probability of innocence of the ac-
20 cused, except that evidence of a trait of the military char-
21 acter of an accused may be offered in evidence by the ac-
22 cused when that trait is relevant to an element of an of-
23 fense for which the accused has been charged.

1 **SEC. 118. APPLICABILITY OF SEXUAL ASSAULT PREVEN-**
2 **TION AND RESPONSE AND RELATED MILI-**
3 **TARY JUSTICE ENHANCEMENTS TO MILITARY**
4 **SERVICE ACADEMIES.**

5 (a) **MILITARY SERVICE ACADEMIES.**—The Secretary
6 of the military department concerned shall ensure that the
7 provisions of this title, and the amendments made by this
8 title, apply to the United States Military Academy, the
9 Naval Academy, and the Air Force Academy, as applica-
10 ble.

11 (b) **COAST GUARD ACADEMY.**—The Secretary of
12 Homeland Security shall ensure that the provisions of this
13 Act, and the amendments made by this Act, apply to the
14 Coast Guard Academy.

15 **SEC. 119. COLLABORATION BETWEEN THE DEPARTMENT**
16 **OF DEFENSE AND THE DEPARTMENT OF JUS-**
17 **TICE IN EFFORTS TO PREVENT AND RE-**
18 **SPOND TO SEXUAL ASSAULT.**

19 (a) **STRATEGIC FRAMEWORK ON COLLABORATION**
20 **REQUIRED.**—Not later than 270 days after the date of
21 the enactment of this Act, the Secretary of Defense and
22 the Attorney General shall jointly develop a strategic
23 framework for ongoing collaboration between the Depart-
24 ment of Defense and the Department of Justice in their
25 efforts to prevent and respond to sexual assault. The
26 framework shall be based on and include the following:

1 (1) An assessment of the role of the Depart-
2 ment of Justice in investigations and prosecutions of
3 sexual assault cases in which the Department of De-
4 fense and the Department of Justice have concur-
5 rent jurisdiction, with the assessment to include a
6 review of and list of recommended revisions to rel-
7 evant Memoranda of Understanding and related doc-
8 uments between the Department of Justice and the
9 Department of Defense.

10 (2) An assessment of the feasibility of estab-
11 lishing the position of advisor on military sexual as-
12 saults within the Department of Justice (using exist-
13 ing Department resources and personnel) to assist in
14 the activities required under paragraph (1) and pro-
15 vide to the Department of Defense investigative and
16 other assistance in sexual assault cases occurring on
17 domestic and overseas military installations over
18 which the Department of Defense has primary juris-
19 diction, with the assessment to address the feasi-
20 bility of maintaining representatives or designees of
21 the advisor at military installations for the purpose
22 of reviewing cases of sexual assault and providing
23 assistance with the investigation and prosecution of
24 sexual assaults.

1 (3) An assessment of the number of unsolved
2 sexual assault cases that have occurred on military
3 installations, and a plan, with appropriate bench-
4 marks, to review those cases using currently avail-
5 able civilian and military law enforcement resources,
6 such as new technology and forensics information.

7 (4) A strategy to leverage efforts by the De-
8 partment of Defense and the Department of Jus-
9 tice—

10 (A) to improve the quality of investiga-
11 tions, prosecutions, specialized training, services
12 to victims, awareness, and prevention regarding
13 sexual assault; and

14 (B) to address social conditions that relate
15 to sexual assault.

16 (5) Mechanisms to promote information sharing
17 and best practices between the Department of De-
18 fense and the Department of Justice on prevention
19 and response to sexual assault, including victim as-
20 sistance through the Violence against Women Act
21 and Office for Victims of Crime programs of the De-
22 partment of Justice.

23 (b) REPORT.—The Secretary of Defense and the At-
24 torney General shall jointly submit to the appropriate

1 committees of Congress a report on the framework re-
 2 quired by subsection (a). The report shall—

3 (1) describe the manner in which the Depart-
 4 ment of Defense and Department of Justice will col-
 5 laborate on an ongoing basis under the framework;

6 (2) explain obstacles to implementing the
 7 framework; and

8 (3) identify changes in laws necessary to
 9 achieve the purpose of this section.

10 (c) APPROPRIATE COMMITTEES OF CONGRESS DE-
 11 FINED.—In this section, the term “appropriate commit-
 12 tees of Congress” means—

13 (1) the Committee on Armed Services and the
 14 Committee on the Judiciary of the Senate; and

15 (2) the Committee on Armed Services and the
 16 Committee on the Judiciary of the House of Rep-
 17 resentatives.

18 **SEC. 120. SENSE OF SENATE ON INDEPENDENT PANEL ON**
 19 **REVIEW AND ASSESSMENT ON RESPONSE**
 20 **SYSTEMS TO SEXUAL ASSAULT CRIMES.**

21 It is the sense of the Senate that—

22 (1) the panel to review and assess the systems
 23 used to respond to sexual assault established by sec-
 24 tion 576 of the National Defense Authorization Act
 25 for Fiscal Year 2013 (Public Law 112–239; 126

1 Stat. 1758) is conducting an independent assess-
2 ment of the systems used to investigate, prosecute,
3 and adjudicate crimes involving adult sexual assault
4 and related offenses;

5 (2) the work of the panel will be critical in in-
6 forming the efforts of Congress to combat rape, sex-
7 ual assault, and other sex-related crimes in the
8 Armed Forces;

9 (3) the panel should include in its assessment
10 under subsection (d)(1) of section 576 of the Na-
11 tional Defense Authorization Act for Fiscal Year
12 2013 a review of the reforms that will be enacted
13 pursuant to this title and the amendments made by
14 this title; and

15 (4) the views of the victim advocate community
16 should continue to be well-represented on the panel,
17 and input from victims should continue to play a
18 central role in informing the work of the panel.

**TITLE II—RELATED MILITARY
JUSTICE MATTERS**

**SEC. 201. ELIMINATION OF FIVE-YEAR STATUTE OF LIMITA-
TIONS ON TRIAL BY COURT-MARTIAL FOR AD-
DITIONAL OFFENSES INVOLVING SEX-RE-
LATED CRIMES.**

(a) IN GENERAL.—Subsection (a) of section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), is amended by striking “rape, or rape of a child” and inserting “rape or sexual assault, or rape or sexual assault of a child”.

(b) CONFORMING AMENDMENT.—Subsection (b)(2)(B)(i) of such section (article) is amended by inserting before the period at the end the following: “, unless the offense is covered by subsection (a)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to offenses committed on or after the date of the enactment of this Act.

**SEC. 202. REVIEW OF DECISIONS NOT TO REFER CHARGES
OF CERTAIN SEXUAL OFFENSES TO TRIAL BY
COURT-MARTIAL.**

(a) IN GENERAL.—The Secretary of Defense shall require the Secretaries of the military departments to provide for review of decisions not to refer charges to trial

1 by court-martial in cases where a specified sexual offense
2 has been alleged by a victim of the alleged offense.

3 (b) SPECIFIED SEXUAL OFFENSES.—For purposes of
4 this section, a specified sexual offense is any of the fol-
5 lowing:

6 (1) Rape or sexual assault under subsection (a)
7 or (b) of section 920 of title 10, United States Code
8 (article 120 of the Uniform Code of Military Jus-
9 tice).

10 (2) Forcible sodomy under section 925 of title
11 10, United States Code (article 125 of the Uniform
12 Code of Military Justice).

13 (3) An attempt to commit an offense specified
14 in paragraph (1) or (2) as punishable under section
15 880 of title 10, United States Code (article 80 of the
16 Uniform Code of Military Justice).

17 (c) REVIEW OF CASES NOT REFERRED TO COURT-
18 MARTIAL FOLLOWING STAFF JUDGE ADVOCATE OR SEN-
19 IOR TRIAL COUNSEL RECOMMENDATION OF REFERRAL
20 FOR TRIAL.—In any case where a staff judge advocate,
21 pursuant to section 834 of title 10, United States Code
22 (article 34 of the Uniform Code of Military Justice), or
23 the senior trial counsel detailed to the case recommends
24 that charges of a specified sexual offense be referred to
25 trial by court-martial and the convening authority decides

1 not to refer the charges to a court-martial, the convening
 2 authority shall forward the case file to the Secretary of
 3 the military department concerned for review as a superior
 4 authorized to exercise general court-martial convening au-
 5 thority.

6 (d) REVIEW OF CASES NOT REFERRED TO COURT-
 7 MARTIAL FOLLOWING STAFF JUDGE ADVOCATE OR SEN-
 8 IOR TRIAL COUNSEL RECOMMENDATION NOT TO REFER
 9 FOR TRIAL.—In any case where a staff judge advocate,
 10 pursuant to section 834 of title 10, United States Code
 11 (article 34 of the Uniform Code of Military Justice), or
 12 the senior trial counsel detailed to the case recommends
 13 that charges of a specified sexual offense should not be
 14 referred to trial by court-martial and the convening au-
 15 thority decides not to refer the charges to a court-martial,
 16 the convening authority shall forward the case file for re-
 17 view by a superior commander authorized to exercise gen-
 18 eral court-martial convening authority.

19 (e) ELEMENTS OF CASE FILE.—A case file forwarded
 20 to higher authority pursuant to subsection (c) or (d) shall
 21 include the following:

22 (1) All charges and specifications preferred
 23 under section 830 of title 10, United States Code
 24 (article 30 of the Uniform Code of Military Justice).

1 (2) All reports of investigations of such charges,
2 including the military criminal investigative organi-
3 zation investigation report and the investigating offi-
4 cer's report under section 832 of title 10, United
5 States Code (article 32 of the Uniform Code of Mili-
6 tary Justice).

7 (3) The written advice of the staff judge advo-
8 cate to the convening authority pursuant to section
9 834 of title 10, United States Code (article 34 of the
10 Uniform Code of Military Justice), together with a
11 certification by the staff judge advocate as to wheth-
12 er the facts as reported by the victim of the alleged
13 offense or complaining witness, if true, would or
14 would not constitute a specified sexual offense.

15 (4) A written statement explaining the reasons
16 for the convening authority's decision not to refer
17 the charges to trial by court-martial.

18 (5) A certification that the victim of the alleged
19 offense or complaining witness was informed of the
20 convening authority's decision to forward the case as
21 provided in subsection (c) or (d).

22 (f) NOTICE ON RESULTS OR REVIEW.—The victim of
23 the alleged offense shall be notified of the results of the
24 review conducted under subsection (c) or (d) in the man-

ner prescribed by the victims and witness assistance program of the Armed Force concerned.

(g) ALLEGATION OF SPECIFIED SEXUAL OFFENSE.—The Secretary of Defense shall require the Secretaries of the military departments to develop a system to ensure that a victim of an alleged offense has an opportunity to specify that the offense alleged is a specified sexual offense either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation.

SEC. 203. DEFENSE COUNSEL INTERVIEW OF COMPLAINING WITNESSES IN PRESENCE OF TRIAL COUNSEL OR OUTSIDE COUNSEL.

Section 846 of title 10, United States Code (article 46 of the Uniform Code of Military Justice), is amended—

(1) by inserting “(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—” before “The trial counsel”;

(2) by striking “Process issued” and inserting the following:

“(c) PROCESS.—Process issued”; and

(3) by inserting after subsection (a), as designated by paragraph (1), the following new subsection (b):

1 “(b) INTERVIEW OF COMPLAINING WITNESSES BY
 2 DEFENSE COUNSEL.—(1) Upon notice by trial counsel to
 3 defense counsel of the name and address of the com-
 4 plaining witness or witnesses trial counsel intends to call
 5 to testify in any portion of an investigation under section
 6 832 of this title (article 32) or a court-martial under this
 7 chapter, defense counsel shall make all requests to inter-
 8 view any such complaining witness through trial counsel.

9 “(2) If requested by a complaining witness subject
 10 to a request for interview under paragraph (1), any inter-
 11 view of the witness by defense counsel shall take place only
 12 in the presence of trial counsel, counsel for the witness,
 13 or outside counsel.”.

14 **SEC. 204. MANDATORY DISCHARGE OR DISMISSAL FOR**
 15 **CERTAIN SEX-RELATED OFFENSES UNDER**
 16 **THE UNIFORM CODE OF MILITARY JUSTICE**
 17 **AND TRIAL OF SUCH OFFENSES BY GENERAL**
 18 **COURTS-MARTIAL.**

19 (a) MANDATORY DISCHARGE OR DISMISSAL RE-
 20 QUIRED.—

21 (1) IN GENERAL.—Section 856 of title 10,
 22 United States Code (article 56 of the Uniform Code
 23 of Military Justice), is amended—

24 (A) by inserting “(a)” before “The punish-
 25 ment”; and

1 (B) by adding at the end the following new
2 subsection:

3 “(b) While a person subject to this chapter who is
4 found guilty of an offense under section 920, 920b, or 925
5 of this title (article 120, 120b, or 125) or an attempt to
6 commit such an offense as punishable under section 880
7 of this title (article 80) shall be punished as a general
8 court-martial may direct, such punishment must include,
9 at a minimum, dismissal or dishonorable discharge.”.

10 (2) CLERICAL AMENDMENTS.—

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

13 **“§ 856. Art. 56. Maximum and minimum limits”.**

14 (B) TABLE OF SECTIONS.—The table of
15 sections at the beginning of subchapter VIII of
16 chapter 47 of such title is amended by striking
17 the item relating to section 856 and inserting
18 the following new item:

“856. Art. 56. Maximum and minimum limits.”.

19 (b) JURISDICTION LIMITED TO GENERAL COURTS-
20 MARTIAL.—Section 818 of such title (article 18 of the
21 Uniform Code of Military Justice) is amended—

22 (1) by inserting “(a)” before the first sentence;

23 (2) in the third sentence, by striking “However,
24 a general court-martial” and inserting the following:

25 “(b) A general court-martial”; and

1 (3) by adding at the end the following new sub-
2 section:

3 “(c) Consistent with section 810, 820, and 856(b) of
4 this title (articles 19, 20, and 56(b)), only general courts-
5 martial have jurisdiction over an offense specified in sec-
6 tion 856(b)(2) of this title (article 56(b)(2)).”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect 180 days after the date of
9 the enactment of this Act.

10 **SEC. 205. LIMITATION ON AUTHORITY OF CONVENING AU-**
11 **THORITY TO MODIFY FINDINGS OF A COURT-**
12 **MARTIAL.**

13 (a) LIMITATION OF AUTHORITY TO OFFENSES THAT
14 WOULD NOT NORMALLY WARRANT TRIAL BY COURT-
15 MARTIAL.—Subsection (c) of section 860 of title 10,
16 United States Code (article 60 of the Uniform Code of
17 Military Justice), is amended—

18 (1) in paragraph (3)—

19 (A) by inserting “may be taken” after
20 “findings of a court-martial”;

21 (B) by striking “is not required. How-
22 ever,” and inserting “only with respect to a
23 qualified offense. With respect to such an of-
24 fense,”;

1 (C) by striking “may—” and all that fol-
 2 lows through “(A) dismiss” and inserting “may
 3 dismiss”;

4 (D) by striking “; or” and inserting a pe-
 5 riod; and

6 (E) by striking subparagraph (B); and

7 (2) by adding at the end the following new
 8 paragraph:

9 “(4)(A) In paragraph (3), the term ‘qualified offense’
 10 means, except as provided in subparagraph (B), an offense
 11 under this chapter for which—

12 “(i) the maximum sentence of confinement that
 13 may be adjudged does not exceed one year; and

14 “(ii) the sentence adjudged does not include
 15 dismissal, a dishonorable or bad-conduct discharge,
 16 or confinement for more than six months.

17 “(B) Such term does not include the following:

18 “(i) An offense under section 920 of this title
 19 (article 120).

20 “(ii) An offense under section 920a of this title
 21 (article 120a).

22 “(iii) An offense under section 920b of this title
 23 (article 120b).

24 “(iv) An offense under section 920c of this title
 25 (article 120c).

1 “(v) Such other offenses as the Secretary of
2 Defense may prescribe by regulation.”.

3 (b) REQUIREMENT FOR EXPLANATION IN WRIT-
4 ING.—Such subsection is further amended by adding after
5 paragraph (4), as added by subsection (a)(2), the fol-
6 lowing new paragraph:

7 “(5) If the convening authority or other person au-
8 thorized to act under this section modifies the findings or
9 sentence of a court-martial, such person shall prepare a
10 written explanation for such modification. Such expla-
11 nation shall be made a part of the record of trial and ac-
12 tion thereon.”.

13 (c) CONFORMING AMENDMENT.—Subsection (e)(3)
14 of such section (article) is amended in the first sentence
15 by inserting “(if authorized to do so under subsection
16 (c))” after “findings and sentence”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 subsections (a) and (c) shall apply with respect to offenses
19 committed on or after the date of the enactment of this
20 Act.

1 **SEC. 206. PARTICIPATION BY COMPLAINING WITNESSES IN**
2 **CLEMENCY PHASE OF COURTS-MARTIAL**
3 **PROCESS.**

4 Section 860(b) of title 10, United States Code (article
5 60(b) of the Uniform Code of Military Justice), is amend-
6 ed by adding at the end the following new paragraphs:

7 “(5)(A) If an accused elects to submit matters for
8 consideration by the convening authority under this sub-
9 section, a copy of any portion of such matters that refers
10 to a complaining witness shall be provided to the com-
11 plaining witness before the convening authority takes any
12 action on the findings or sentence under this section.

13 “(B)(i) Upon receipt of matters under this para-
14 graph, a complaining witness shall have 10 days to submit
15 materials in response to such matters to the convening au-
16 thority.

17 “(ii) If a complaining witness shows that additional
18 time is required for submission of materials under this
19 subparagraph, the convening authority or other person
20 taking action under this section, for good cause, may ex-
21 tend the applicable period for submission of such materials
22 for not more than an additional 20 days.

23 “(6) In any case in which findings and sentence have
24 been adjudged for an offense involving a complaining wit-
25 ness, the complaining witness shall be provided an oppor-

1 tunity to submit matters to the convening authority for
 2 consideration prior to taking action under this section.

3 “(7) The convening authority shall not consider
 4 under this section any submitted matters that go to the
 5 character of a complaining witness unless such matters
 6 were presented at the court-martial.”.

7 **SEC. 207. SECRETARY OF DEFENSE REPORT ON MODIFICA-**
 8 **TIONS TO THE UNIFORM CODE OF MILITARY**
 9 **JUSTICE TO PROHIBIT SEXUAL ACTS AND**
 10 **CONTACTS BETWEEN MILITARY INSTRU-**
 11 **TORS AND TRAINEES.**

12 (a) REPORT REQUIRED.—Not later than 60 days
 13 after the date of the enactment of this Act, the Secretary
 14 of Defense shall submit to the Committees on Armed Serv-
 15 ices of the Senate and the House of Representatives a re-
 16 port setting forth the recommendations of the Secretary
 17 for such legislative action as the Secretary considers ap-
 18 propriate to modify chapter 47 of title 10, United States
 19 Code (the Uniform Code of Military Justice), to prohibit
 20 sexual acts and contacts between military instructors and
 21 their trainees.

22 (b) COVERED MILITARY INSTRUCTORS.—For pur-
 23 poses the report required by this section, military instruc-
 24 tors shall include the following:

25 (1) Drill Sergeants in the Army.

1 (2) Drill Instructors in the Marine Corps.

2 (3) Recruit Division Commanders in the Navy.

3 (4) Military Training instructors in the Air
4 Force.

5 (5) Company Commanders in the Coast Guard.

6 (6) Such other members of the Armed Forces
7 as the Secretary considers appropriate for purposes
8 of the report as having supervisory authority over
9 new recruits in the Armed Forces undergoing basic
10 training (or its equivalent).

11 **SEC. 208. SENSE OF SENATE ON DISPOSITION OF CHARGES**
12 **INVOLVING CERTAIN SEXUAL MISCONDUCT**
13 **OFFENSES UNDER THE UNIFORM CODE OF**
14 **MILITARY JUSTICE THROUGH COURTS-MAR-**
15 **TIAL.**

16 (a) SENSE OF SENATE.—It is the sense of the Senate
17 that—

18 (1) any charge regarding an offense specified in
19 subsection (b) should be disposed of by court-mar-
20 tial, rather than by non-judicial punishment or ad-
21 ministrative action; and

22 (2) in the case of any charge regarding an of-
23 fense specified in subsection (b) that is disposed of
24 by non-judicial punishment or administrative action,
25 rather than by court-martial, the disposition author-

1 ity should include in the case file a justification for
 2 the disposition of the charge by non-judicial punish-
 3 ment or administrative action, rather than by court-
 4 martial.

5 (b) COVERED OFFENSES.—An offense specified in
 6 this subsection is any of the following offenses under chap-
 7 ter 47 of title 10, United States Code (the Uniform Code
 8 of Military Justice):

9 (1) Rape or sexual assault under subsection (a)
 10 or (b) of section 920 of such chapter (article 120 of
 11 the Uniform Code of Military Justice).

12 (2) Forcible sodomy under section 925 of such
 13 chapter (article 125 of the Uniform Code of Military
 14 Justice).

15 (3) An attempt to commit an offense specified
 16 in paragraph (1) or (2), as punishable under section
 17 880 of such chapter (article 80 of the Uniform Code
 18 of Military Justice).

19 **SEC. 209. SENSE OF SENATE ON THE DISCHARGE IN LIEU**
 20 **OF COURT-MARTIAL OF MEMBERS OF THE**
 21 **ARMED FORCES WHO COMMIT SEXUAL-RE-**
 22 **LATED OFFENSES.**

23 It is the sense of the Senate that—

24 (1) the Armed Forces should be sparing in dis-
 25 charging in lieu of court-martial members of the

1 Armed Forces who have committed rape, sexual as-
 2 sault, forcible sodomy, or attempts to commit such
 3 offenses, and should do so only when the facts of the
 4 case clearly warrant such discharge;

5 (2) whenever possible, the victims of offenses
 6 referred to in paragraph (1) should be consulted
 7 prior to the determination regarding whether to dis-
 8 charge the members who committed such offenses;

9 (3) commanding officers should consider the
 10 views of victims of offenses referred to in paragraph
 11 (1) when determining whether to discharge the
 12 members who committed such offenses in lieu of try-
 13 ing such members by court-martial; and

14 (4) the discharge of any member who is dis-
 15 charged as described in paragraph (1) should be
 16 characterized as Other Than Honorable.

17 **TITLE III—OTHER MILITARY** 18 **JUSTICE AND LEGAL MATTERS**

19 **SEC. 301. PROHIBITION OF RETALIATION AGAINST MEM-** 20 **BERS OF THE ARMED FORCES FOR REPORT-** 21 **ING A CRIMINAL OFFENSE.**

22 (a) REGULATIONS ON PROHIBITION OF RETALIATION
 23 REQUIRED.—The Secretary of Defense shall, not later
 24 than 120 days after the date of the enactment of this Act,
 25 prescribe regulations, or require the Secretaries of the

1 military departments to prescribe regulations, that pro-
2 hibit retaliation against an alleged victim or other member
3 of the Armed Forces who reports a criminal offense. The
4 regulations shall prescribe that a violation of the regula-
5 tions is an offense punishable under section 892 of title
6 10, United States Code (article 92 of the Uniform Code
7 of Military Justice).

8 (b) REPORT.—Not later than 180 days after the date
9 of the enactment of this Act, the Secretary of Defense
10 shall submit to Congress a report setting forth the rec-
11 ommendations of the Secretary as to whether chapter 47
12 of title 10, United States Code (the Uniform Code of Mili-
13 tary Justice), should be amended to prohibit retaliation
14 against an alleged victim or other member of the Armed
15 Forces who reports a criminal offense.

16 (c) RETALIATION.—For purposes of this section, re-
17 taliation shall include, as a minimum, taking or threat-
18 ening to take any adverse personnel action, or failing to
19 take or threatening not to take a favorable personnel ac-
20 tion, with respect to a member of the Armed Forces be-
21 cause the member reported a criminal offense.

1 **SEC. 302. EXTENSION OF CRIME VICTIMS' RIGHTS TO VIC-**
2 **TIMS OF OFFENSES UNDER THE UNIFORM**
3 **CODE OF MILITARY JUSTICE.**

4 (a) IN GENERAL.—Not later than one year after the
5 date of the enactment of this Act, the Secretary of Defense
6 shall recommend to the President modifications to the
7 Manual for Courts-Martial, and prescribe such other regu-
8 lations as the Secretary considers appropriate, to enforce
9 the rights of victims of military crimes as specified in sub-
10 section (b) and to ensure compliance by responsible mem-
11 bers of the Armed Forces and personnel of the Depart-
12 ment of Defense with the obligations to enforce such
13 rights.

14 (b) RIGHTS.—The rights of victims of military crimes
15 specified in this subsection are the following rights:

16 (1) The right to be reasonably protected from
17 the accused.

18 (2) The right to reasonable, accurate, and time-
19 ly notice of any public proceeding in an investigation
20 under section 832 of title 10, United States Code
21 (article 32 of the Uniform Code of Military Justice),
22 court-martial, involuntary plea hearing, pre-sen-
23 tencing hearing, or parole hearing involving the of-
24 fense or of any release or escape of the accused.

25 (3) The right not to be excluded from any pub-
26 lic proceeding referred to in paragraph (2) unless

1 the military judge or investigating officer, as appli-
2 cable, after receiving clear and convincing evidence,
3 determines that testimony by the victim would be
4 materially altered if the victim heard other testi-
5 mony at that proceeding.

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

8 (5) The reasonable right to confer with the trial
9 counsel in the case.

10 (6) The right to full and timely restitution as
11 provided in law.

12 (7) The right to proceedings free from unrea-
13 sonable delay.

14 (8) The right to be treated with fairness and
15 with respect for the victim's dignity and privacy.

16 (c) VICTIMS.—

17 (1) IN GENERAL.—For purposes of the rec-
18 ommendations and regulations required by sub-
19 section (a), a victim of a military crime shall be any
20 person who has suffered direct physical, emotional,
21 or pecuniary harm as a result of the commission
22 of—

23 (A) an offense under chapter 47 of the
24 Uniform Code of Military Justice; or

1 (B) a violation of any other law if any por-
2 tion of the investigation of such violation is con-
3 ducted primarily by an element of the Depart-
4 ment of Defense.

5 (2) UNDERAGE, INCOMPETENT, AND OTHER IN-
6 DIVIDUAL VICTIMS.—For such purposes, in the case
7 of a victim who is under 18 years of age, incom-
8 petent, incapacitated, or deceased, a victim of a mili-
9 tary crime includes one of the following (in order of
10 precedence): a spouse, legal guardian, parent, child,
11 sibling, another family member, or another person
12 designated by the military judge or other appro-
13 priate authority.

14 (3) INSTITUTIONAL ENTITY VICTIMS.—For such
15 purposes, if a victim is an institutional entity, the
16 victim of a military crime is an authorized represent-
17 ative of the entity.

18 (4) GOVERNMENTAL ENTITIES EXCLUDED.—
19 For such purposes, departments and agencies of the
20 Federal Government, and agencies of State and local
21 governments, are not victims of military crimes.

22 (d) MECHANISMS FOR AFFORDING RIGHTS.—The
23 recommendations and regulations required by subsection
24 (a) shall include the following:

1 (1) Mechanisms for ensuring that victims of
2 military crimes are afforded the rights specified in
3 subsection (b) in all applicable proceedings.

4 (2) Mechanisms for ensuring that members of
5 the Armed Forces and civilian personnel of the De-
6 partment of Defense (including military judges, trial
7 counsel, military criminal investigation organiza-
8 tions, services, and personnel, and other members
9 and personnel of the Department of Defense en-
10 gaged in the detection, investigation, or prosecution
11 of offenses under chapter 47 of title 10, United
12 States Code (the Uniform Code of Military Justice))
13 make their best efforts to see that victims of military
14 crimes are notified of, and accorded, the rights spec-
15 ified in subsection (b) in all applicable proceedings.

16 (3) Mechanisms for the enforcement of such
17 rights, including such mechanisms for application
18 for such rights and for consideration and disposition
19 of applications for such rights as the Secretary of
20 Defense considers appropriate.

21 (4) The designation of an authority within the
22 Department of Defense to receive and investigate
23 complaints relating to the provision or violation of
24 the rights of victims of military crimes.

1 (5) Disciplinary sanctions for members of the
 2 Armed Forces and other personnel of the Depart-
 3 ment of Defense who willfully or wantonly fail to
 4 comply with requirements relating to the rights of
 5 victims of military crimes.

6 (6) Such other mechanisms as the Secretary of
 7 Defense considers appropriate.

8 **SEC. 303. MODIFICATION OF MANUAL FOR COURTS-MAR-**
 9 **TIAL TO ELIMINATE FACTOR RELATING TO**
 10 **CHARACTER AND MILITARY SERVICE OF THE**
 11 **ACCUSED IN RULE ON INITIAL DISPOSITION**
 12 **OF OFFENSES.**

13 Not later than 180 days after the date of the enact-
 14 ment of this Act, the discussion pertaining to Rule 306
 15 of the Manual for Courts-Martial (relating to policy on
 16 initial disposition of offenses) shall be amended to strike
 17 the character and military service of the accused from the
 18 matters a commander should consider in deciding how to
 19 dispose of an offense.

20 **SEC. 304. PRELIMINARY HEARINGS ON ALLEGED OFFENSES**
 21 **UNDER THE UNIFORM CODE OF MILITARY**
 22 **JUSTICE.**

23 (a) PRELIMINARY HEARINGS.—

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

4 **“§ 832. Art. 32. Preliminary hearing**

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

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

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

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

22 “(5) After conducting the preliminary hearing, the
23 judge advocate or officer conducting the preliminary hear-
24 ing shall prepare a report that includes the following:

1 “(A) A determination as to court-martial juris-
2 diction over the offense and the accused.

3 “(B) A determination as to probable cause.

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

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

7 “(b)(1) The accused shall be advised of the charges
8 against the accused and of the accused’s right to be rep-
9 resented by counsel at the preliminary hearing. The ac-
10 cused has the right to be represented at the preliminary
11 hearing as provided in section 838 of this title (article 38)
12 and in regulations prescribed under that section.

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

17 “(3) A victim may not be required to testify at the
18 preliminary hearing. A victim who declines to testify shall
19 be deemed to be not available for purposes of the prelimi-
20 nary hearing.

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

24 “(c) A preliminary hearing under this section shall
25 be recorded by a suitable recording device, and a copy of

1 the recording shall be provided to any party upon request.
 2 The victim shall have access to the recording, upon re-
 3 quest, in accordance with regulations prescribed by the
 4 Secretary concerned for purposes of this section.

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

8 (2) CLERICAL AMENDMENT.—The table of sec-
 9 tions at the beginning of subchapter VI of chapter
 10 47 of such title (the Uniform Code of Military Jus-
 11 tice) is amended by striking the item relating to sec-
 12 tion 832 (article 32) and inserting the following new
 13 item:

“832. Art. 32. Preliminary hearing.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 834(a)(2) of such title (article
 16 34(a)(2) of the Uniform Code of Military Justice) is
 17 amended by striking “the report of investigation”
 18 and inserting “the report of the preliminary hear-
 19 ing”.

20 (2) Section 838(b)(1) of such title (article
 21 38(b)(1) of the Uniform Code of Military Justice) is
 22 amended by striking “an investigation” and insert-
 23 ing “a preliminary hearing”.

24 (c) EFFECTIVE DATE.—The amendments made by
 25 this section shall take effect on the date that is one year

1 after the date of the enactment of this Act, and shall apply
2 with respect to offenses under chapter 47 of title 10,
3 United States Code (the Uniform Code of Military Jus-
4 tice), that occur on or after such effective date.

Calendar No. 253

113TH CONGRESS
1ST Session

S. 1775

A BILL

To improve the sexual assault prevention and response programs and activities of the Department of Defense, and for other purposes.

DECEMBER 9, 2013

Read the second time and placed on the calendar