

113TH CONGRESS
1ST SESSION

S. 548

To amend title 10, United States Code, to improve and enhance the capabilities of the Armed Forces to prevent and respond to sexual assault and sexual harassment in the Armed Forces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2013

Ms. KLOBUCHAR (for herself and Ms. MURKOWSKI) 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 improve and enhance the capabilities of the Armed Forces to prevent and respond to sexual assault and sexual harassment in the Armed Forces, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. PROHIBITION ON SERVICE IN THE ARMED FORCES**
 2 **BY INDIVIDUALS WHO HAVE BEEN CON-**
 3 **VICTED OF A SEXUAL OFFENSE.**

4 (a) PROHIBITION.—Chapter 37 of title 10, United
 5 States Code, is amended adding at the end the following
 6 new section:

7 **“§ 656. Prohibition on service in the armed forces by**
 8 **individuals convicted of a sexual offense**

9 “(a) PROHIBITION ON COMMISSIONING OR ENLIST-
 10 MENT.—(1) A person who has been convicted of an offense
 11 specified in paragraph (2) under Federal or State law may
 12 not be processed for commissioning or permitted to enlist
 13 in the armed forces.

14 “(2) An offense specified in this paragraph is any fel-
 15 ony offense as follows:

16 “(A) Rape.

17 “(B) Sexual assault.

18 “(C) Forcible sodomy.

19 “(D) Incest.

20 “(b) ADMINISTRATIVE SEPARATION FOR CERTAIN
 21 OFFENSES NOT RESULTING IN PUNITIVE DISCHARGE.—

22 (1) Any member of the armed forces on active duty, and
 23 any member of a reserve component of the armed forces
 24 not on active duty but in active status, who is convicted
 25 of an offense specified in paragraph (2) and not punitively
 26 discharged from the armed forces in connection with such

1 conviction shall be separated administratively from the
 2 armed forces for such offense.

3 “(2) An offense specified in this paragraph is any of-
 4 fense as follows:

5 “(A) Rape or sexual assault under subsection
 6 (a) or (b) of section 920 of this title (article 120 of
 7 the Uniform Code of Military Justice).

8 “(B) Forcible sodomy under section 925 of this
 9 title (article 125 of the Uniform Code of Military
 10 Justice).

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

15 “(3) Under regulations prescribed by the Secretary
 16 of Defense, the Secretary of the military department con-
 17 cerned may waive the requirement in paragraph (1) with
 18 respect to a member if the waiver is determined appro-
 19 priate in the interests of the national security of the
 20 United States. Waivers under this paragraph shall be
 21 made on a case-by-case basis.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
 23 at the beginning of chapter 37 of such title is amended
 24 by adding at the end the following new item:

“656. Prohibition on service in the armed forces by individuals convicted of a
 sexual offense.”.

1 **SEC. 3. PERSONS WHO MAY EXERCISE DISPOSITION AU-**
 2 **THORITY REGARDING CHARGES INVOLVING**
 3 **CERTAIN SEXUAL MISCONDUCT OFFENSES**
 4 **UNDER THE UNIFORM CODE OF MILITARY**
 5 **JUSTICE.**

6 (a) PERSONS WHO MAY EXERCISE DISPOSITION AU-
 7 THORITY.—

8 (1) DISPOSITION AUTHORITY.—With respect to
 9 any charge under chapter 47 of title 10, United
 10 States Code (the Uniform Code of Military Justice),
 11 that alleges an offense specified in paragraph (2),
 12 the Secretary of Defense shall require the Secre-
 13 taries of the military departments to restrict disposi-
 14 tion authority under section 830 of such chapter (ar-
 15 ticle 30 of the Uniform Code of Military Justice) to
 16 officers of the Armed Forces who have the authority
 17 to convene special courts-martial under section 823
 18 of such chapter (article 23 of the Uniform Code of
 19 Military Justice), but not lower than the following:

20 (A) In the case of a training command, the
 21 first brigadier general, or, in the case of the
 22 Navy, the first rear admiral (lower half), with
 23 a legal advisor (or access to a legal advisor) in
 24 the chain of command of the person accused of
 25 committing the offense.

1 (B) In the case of any other command, the
 2 first colonel, or in the case of the Navy, the
 3 first captain, with a legal advisor (or access to
 4 a legal advisor) in the chain of command of the
 5 person accused of committing the offense.

6 (2) COVERED OFFENSES.—Paragraph (1) ap-
 7 plies with respect to a charge that alleges any of the
 8 following offenses under chapter 47 of title 10,
 9 United States Code (the Uniform Code of Military
 10 Justice):

11 (A) Rape or sexual assault under sub-
 12 section (a) or (b) of section 920 of such chapter
 13 (article 120 of the Uniform Code of Military
 14 Justice).

15 (B) Forcible sodomy under section 925 of
 16 such chapter (article 125 of the Uniform Code
 17 of Military Justice).

18 (C) An attempt to commit an offense spec-
 19 ified in subparagraph (A) or (B), as punishable
 20 under section 880 of such chapter (article 80 of
 21 the Uniform Code of Military Justice).

22 (b) IMPLEMENTATION.—

23 (1) SECRETARIES OF MILITARY DEPART-
 24 MENTS.—The Secretaries of the military depart-

1 ments shall revise policies and procedures as nec-
2 essary to comply with subsection (a).

3 (2) SECRETARY OF DEFENSE.—Not later than
4 180 days after the date of the enactment of this Act,
5 the Secretary of Defense shall recommend such
6 changes to the Manual for Courts-Martial as are
7 necessary to ensure compliance with subsection (a).

8 **SEC. 4. POLICY OF THE UNITED STATES ON DISPOSITION**
9 **OF CHARGES INVOLVING CERTAIN SEXUAL**
10 **MISCONDUCT OFFENSES UNDER THE UNI-**
11 **FORM CODE OF MILITARY JUSTICE THROUGH**
12 **COURTS-MARTIAL.**

13 (a) STATEMENT OF POLICY.—It shall be the policy
14 of the United States that any charge regarding an offense
15 specified in subsection (b) should be disposed of by court-
16 martial, rather than by non-judicial punishment or admin-
17 istrative action.

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

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

1 (2) Forcible sodomy under section 925 of such
2 chapter (article 125 of the Uniform Code of Military
3 Justice).

4 (3) An attempt to commit an offense specified
5 in paragraph (1) or (2), as punishable under section
6 880 of such chapter (article 80 of the Uniform Code
7 of Military Justice).

8 (c) JUSTIFICATION FOR DISPOSITION OTHER THAN
9 BY COURT-MARTIAL.—In the case of any charge regard-
10 ing an offense specified in subsection (b) that is disposed
11 of by non-judicial punishment or administrative action,
12 rather than by court-martial, the disposition authority
13 provided for in section 3 shall include in the case file a
14 justification for the disposition of the charge by non-judi-
15 cial punishment or administrative action, rather than by
16 court-martial.

17 **SEC. 5. COMMAND ACTION ON REPORTS BY MEMBERS OF**
18 **THE ARMED FORCES OF SEXUAL OFFENSES**
19 **INVOLVING MEMBERS.**

20 (a) MAXIMUM PERIOD FOR ACTION.—A commanding
21 officer who receives a report of a sexual-related offense
22 involving a member of the Armed Forces in the chain of
23 command of such officer shall act upon the report in ac-
24 cordance with subsection (b) by not later than 24 hours
25 after receipt of the report by the commanding officer.

1 (b) REQUIRED ACTION.—The action required by this
 2 subsection with respect to a report described in subsection
 3 (a) is, at the election of the commanding officer concerned,
 4 one of the following:

5 (1) The submittal of the report to the next
 6 higher officer in the chain of command of the com-
 7 manding officer concerned.

8 (2) The referral of the report to the office of
 9 the special investigation of the military department
 10 concerned or such other investigation service of the
 11 military department concerned as the Secretary of
 12 the military department concerned may specify for
 13 purposes of this section.

14 **SEC. 6. INCLUSION AND COMMAND REVIEW OF INFORMA-**
 15 **TION ON SEXUAL-RELATED OFFENSES IN**
 16 **PERSONNEL SERVICE RECORDS OF MEM-**
 17 **BERS OF THE ARMED FORCES.**

18 (a) INFORMATION ON SUBSTANTIATED REPORTS ON
 19 SEXUAL-RELATED OFFENSES.—

20 (1) IN GENERAL.—If a complaint of a sexual-
 21 related offense is made against a member of the
 22 Armed Forces and the complaint is substantiated, a
 23 notation to that effect shall be placed in the per-
 24 sonnel service record of the member, regardless of
 25 the member's 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).

21 **SEC. 7. COLLECTION AND RETENTION OF RECORDS ON DIS-**
22 **POSITION OF REPORTS OF SEXUAL ASSAULT.**

23 (a) COLLECTION.—The Secretary of Defense shall re-
24 quire that the Secretary of each military department es-
25 tablish a record on the disposition of any report of sexual

1 assault, whether such disposition is court-martial, non-ju-
2 dicial punishment, or other administrative action. The
3 record of any such disposition shall include the following,
4 as appropriate:

5 (1) Documentary information collected about
6 the incident reported.

7 (2) Punishment imposed, including the sen-
8 tencing by judicial or non-judicial means including
9 incarceration, fines, restriction, and extra duty as a
10 result of military court-martial, Federal and local
11 court and other sentencing, or any other punishment
12 imposed.

13 (3) Reasons for the selection of the disposition
14 and punishments selected.

15 (4) Administrative actions taken, if any.

16 (5) Any pertinent referrals offered as a result
17 of the incident (such as drug and alcohol counseling
18 and other types of counseling or intervention).

19 (b) RETENTION.—The Secretary of Defense shall re-
20 quire that—

21 (1) the records established pursuant to sub-
22 section (a) be retained by the Department of De-
23 fense for a period of not less than 50 years; and

1 (2) a copy of such records be maintained at a
 2 centralized location for the same period as applies to
 3 retention of the records under paragraph (1).

4 **SEC. 8. RETENTION OF CERTAIN FORMS IN CONNECTION**
 5 **WITH RESTRICTED REPORTS ON SEXUAL AS-**
 6 **SAULT INVOLVING MEMBERS OF THE ARMED**
 7 **FORCES.**

8 (a) REQUIREMENT FOR RETENTION.—Subsection (a)
 9 of section 577 of the National Defense Authorization Act
 10 for Fiscal Year 2013 (Public Law 112–239) is amended
 11 by striking “At the request of a member of the Armed
 12 Forces who files a Restricted Report on an incident of sex-
 13 ual assault involving the member, the Secretary of Defense
 14 shall” and inserting “The Secretary of Defense shall”.

15 (b) CONFORMING AMENDMENT.—The heading of
 16 such section is amended by striking “**AT REQUEST OF**
 17 **THE MEMBER OF THE ARMED FORCES MAKING THE**
 18 **REPORT**”.

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