

116TH CONGRESS  
1ST SESSION

# S. 1500

To amend title 10, United States Code, to improve and enhance protections for members of the Armed Forces who are victims of a sex-related or domestic violence offense, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 16, 2019

Ms. ERNST (for herself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend title 10, United States Code, to improve and enhance protections for members of the Armed Forces who are victims of a sex-related or domestic violence offense, 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 Special Vic-

5       tims Protection Act of 2019”.

1   **SEC. 2. ENACTMENT AND EXPANSION OF POLICY ON WITH-**  
2                   **HOLDING OF INITIAL DISPOSITION AUTHOR-**  
3                   **ITY FOR CERTAIN OFFENSES UNDER THE**  
4                   **UNIFORM CODE OF MILITARY JUSTICE.**

5    (a) **INITIAL DISPOSITION AUTHORITY.—**

6                   (1) **IN GENERAL.**—Except as provided in para-  
7                   graph (2), the proper authority for a determination  
8                   of disposition of reported offenses with respect to  
9                   any offense specified in subsection (b) shall be an of-  
10                   ficer in a grade not below the grade of O-6 in the  
11                   chain of command of the subject who is authorized  
12                   by chapter 47 of such title (the Uniform Code of  
13                   Military Justice) to convene special courts-martial.

14                   (2) **AUTHORITY WHEN SUBJECT AND VICTIM**  
15                   **ARE IN DIFFERENT CHAINS OF COMMAND.**—If the  
16                   victim of an offense specified in subsection (b) is in  
17                   a different chain of command than the subject, the  
18                   proper authority under paragraph (1) shall be an of-  
19                   ficer described in that paragraph in the chain of  
20                   command of the victim.

21                   (3) **CONSTRUCTION.**—Nothing in this sub-  
22                   section shall be construed—

23                   (A) to prohibit the preferral of charges by  
24                   an authorized person under section 830(a)(1) of  
25                   title 10, United States Code (article 30(a)(1) of  
26                   the Uniform code of Military Justice), with re-

1           spect to the offenses specified in subsection (b),  
2           and the forwarding of such charges as so pre-  
3           ferred to the proper authority under paragraph  
4           (1) with a recommendation as to conviction, an

10 (b) COVERED OFFENSES.—An offense specified in  
11 this subsection is any offense as follows:

6 (5) An offense under section 919a of title 10,  
7 United States Code (article 119a of the Uniform  
8 Code of Military Justice), relating to death or injury  
9 of an unborn child, if the offense is committed in  
10 connection with family abuse or other domestic vio-  
11 lence.

21 (8) An offense under section 920b of title 10,  
22 United States Code (article 120b of the Uniform  
23 Code of Military Justice), relating to rape and sex-  
24 ual assault of a child.

15 (12) An offense under section 928a of title 10,  
16 United States Code (article 128a of the Uniform  
17 Code of Military Justice), relating to maiming, if the  
18 offense is committed in connection with family abuse  
19 or other domestic violence.

20 (13) An offense under section 928b of title 10,  
21 United States Code (article 128b of the Uniform  
22 Code of Military Justice), relating to domestic vio-  
23 lence.

(14) An offense under section 930 of title 10,  
United States Code (article 130 of the Uniform

1       Code of Military Justice), relating to stalking, if the  
2       offense is committed in connection with family abuse  
3       or other domestic violence.

4               (15) An offense under section 932 of title 10,  
5       United States Code (article 132 of the Uniform  
6       Code of Military Justice), relating to retaliation.

7               (16) An offense under section 934 of title 10,  
8       United States Code (article 134 of the Uniform  
9       Code of Military Justice), if the offense relates to  
10      child pornography.

11               (17) An offense under section 934 of title 10,  
12       United States Code (article 134 of the Uniform  
13       Code of Military Justice), if the offense—

14                       (A) relates to animal abuse; and  
15                       (B) is committed in connection with family  
16       abuse or other domestic violence.

17               (18) An offense under section 934 of title 10,  
18       United States Code (article 134 of the Uniform  
19       Code of Military Justice), if the offense—

20                       (A) relates to negligent homicide; and  
21                       (B) is committed in connection with family  
22       abuse or other domestic violence.

23               (19) An attempt to commit an offense specified  
24       in a paragraph (1) through (18) as punishable under

1       section 880 of title 10, United States Code (article  
2       80 of the Uniform Code of Military Justice).

3       (c) SCOPE OF DISPOSITION AUTHORITY WITH RE-  
4       SPECT TO PARTICULAR OFFENSES.—The authority in  
5       subsection (a) of an officer to make a disposition deter-  
6       mination described in that subsection with respect to any  
7       offense specified in subsection (b) extends to a determina-  
8       tion of disposition with respect to any of the following:

9               (1) Any other offenses against the subject aris-  
10          ing out of the incident in which the offense is alleged  
11          to have occurred.

12               (2) Any reported offenses in connection with  
13          misconduct of the victim, arising out of such inci-  
14          dent.

15       (d) SCOPE OF DISPOSITION DETERMINATIONS.—Ex-  
16          cept for an offense specified in section 818(c) of title 10,  
17          United States Code (article 18(c) of the Uniform Code of  
18          Military Justice), of which only general courts-martial  
19          have jurisdiction, the disposition determinations permis-  
20          sible in the exercise of the authority under this section  
21          with respect to charges and specifications are as follows:

22               (1) No action.

23               (2) Administrative action.

24               (3) Imposition of non-judicial punishment.

25               (4) Preferral of charges.

4 (6) Forwarding to a superior or subordinate au-  
5 thority for further disposition.

6 (e) REVIEW OF CERTAIN DISPOSITION DETERMINA-  
7 TIONS.—

19 (A) review the disposition determination;  
20 and

(B) recommend to the staff judge advocate in the chain of command whether to endorse or supersede the disposition determination.

1 graph (1)(B), the staff judge advocate concerned  
2 shall advise the next superior commander in the  
3 chain of command of the officer making the original  
4 disposition determination whether such disposition  
5 determination should be endorsed or superseded.

6 (3) FINAL DISPOSITION DETERMINATION.—  
7 After considering advice under paragraph (2) with  
8 respect to an original disposition determination, the  
9 superior commander concerned shall—

10 (A) make a new disposition determination  
11 with respect to the offenses concerned; or  
12 (B) endorse the original disposition deter-  
13 mination for appropriate further action.

14 (f) TRAINING.—

15 (1) IN GENERAL.—The training provided to  
16 commissioned officers of the Armed Forces in grades  
17 O-6 and above on the exercise of authority pursuant  
18 to this section for determinations of the disposition  
19 of an offense specified in subsection (b) shall include  
20 specific training on such matters in connection with  
21 sexual harassment, sexual assault, and family abuse  
22 and domestic violence as the Secretary of Defense  
23 considers appropriate to make informed disposition  
24 determinations under such authority.

6 (g) MANUAL FOR COURTS-MARTIAL.—The President  
7 shall implement the requirement of this section into the  
8 Manual for Courts-Martial in accordance with section 836  
9 of title 10, United States Code (article 36 of the Uniform  
10 Code of Military Justice).

## 11 SEC. 3. SPECIAL VICTIMS' COUNSEL MATTERS.

12 (a) EXPANSION OF COVERED OFFENSES TO IN-  
13 CLUDE ALLEGED DOMESTIC VIOLENCE OFFENSES.—

14 (1) IN GENERAL.—Section 1044e of title 10,  
15 United States Code, is amended—

16 (A) by striking “alleged sex-related of-  
17 fense” each place it appears and inserting “al-  
18 leged covered offense”; and

19 (B) by striking subsection (g) and insert-  
20 ing the following new subsection (g):

21        "(g) DEFINITIONS.—In this section:

22                   “(1) The term ‘alleged covered offense’ means  
23                   any of the following:

1           “(2) The term ‘alleged sex-related offense’  
2   means any allegation of—

3           “(A) a violation of section 920, 920b,  
4   920c, or 930 of this title (article 120, 120b,  
5   120c, or 130 of the Uniform Code of Military  
6   Justice); or

7           “(B) an attempt to commit an offense  
8   specified in a subparagraph (A) as punishable  
9   under section 880 of this title (article 80 of the  
10   Uniform Code of Military Justice).

11          “(3) The term ‘alleged domestic violence of-  
12   fense’ means any allegation of—

13           “(A) a violation of section 928(b), 928b(1),  
14   928b(5), or 930 of this title (article 128(b),  
15   128b(1), 128b(5), or 130 of the Uniform Code  
16   of Military Justice), when committed against a  
17   spouse, intimate partner, or immediate family  
18   member;

19           “(B) a violation of any other provision of  
20   subchapter X of chapter 47 of this title (the  
21   Uniform Code of Military Justice), when com-  
22   mitted against a spouse, intimate partner, or  
23   immediate family member, as specified by the  
24   Secretary concerned for purposes of eligibility  
25   for legal consultation and assistance by Special

1                   Victims' Counsel under the jurisdiction of such  
2                   Secretary under this section; or

3                   “(C) an attempt to commit an offense  
4                   specified in a subparagraph (A) or (B) as pun-  
5                   ishable under section 880 of this title (article  
6                   80 of the Uniform Code of Military Justice).”.

7                   (2) CONFORMING AND CLERICAL AMEND-  
8                   MENTS.—

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

11                  **“§ 1044e. Special Victims' Counsel: victims of sex-re-  
12                  lated offenses; victims of domestic vio-  
13                  lence offenses”.**

14                  (B) TABLE OF SECTIONS.—the table of  
15                  sections at the beginning of chapter 53 of such  
16                  title is amended by striking the item relating to  
17                  section 1044e and inserting the following new  
18                  item:

“1044e. Special Victims' Counsel: victims of sex-related offenses; victims of do-  
mestic violence offenses.”.

19                  (b) EXPANSION OF ELIGIBILITY TO ALL CIVILIAN  
20                  VICTIMS OF ALLEGED COVERED OFFENSES.—Subsection  
21                  (a)(2) of section 1044e of such title, as amended by sub-  
22                  section (a)(1) of this section, is further amended by strik-  
23                  ing subparagraph (C) and inserting the following new sub-  
24                  paragraph (C):

1               “(C) Any civilian individual not covered by sub-  
2       paragraph (A) or (B) who is the victim of an alleged  
3       covered offense if the Secretary of Defense or the  
4       Secretary of the military department concerned  
5       waives any condition in such section for the purposes  
6       of offering Special Victims’ Counsel services to such  
7       individual.”.

8               (c) ENHANCEMENT OF LEGAL CONSULTATION AND  
9       ASSISTANCE IN CONNECTION WITH POTENTIAL VICTIM  
10      BENEFITS.—Paragraph (8)(D) of subsection (b) of such  
11     section is amended by striking “and other” and inserting  
12    “, section 1408(h) of this title, and other”.

13               (d) EXPANSION OF LEGAL ASSISTANCE AUTHORIZED  
14      TO INCLUDE CONSULTATION AND ASSISTANCE FOR RE-  
15      TALIATION.—Subsection (b) of such section is amended  
16     further—

17               (1) by redesignating paragraph (10) as para-  
18       graph (11); and

19               (2) by inserting after paragraph (9) the fol-  
20       lowing new paragraph (10):

21               “(10) Legal consultation and assistance in con-  
22       nection with an incident of retaliation, whether such  
23       incident occurs before, during, or after the conclu-  
24       sion of any criminal proceedings, including—

1                 “(A) in understanding the rights and pro-  
2                 tections afforded to victims of retaliation;  
3                 “(B) in the filing of complaints; and  
4                 “(C) in any resulting military justice pro-  
5                 ceedings.”.

6         (e) CODIFICATION OF DUTY TO DETERMINE VIC-  
7     TIM’S PREFERENCE FOR PROSECUTION OF ALLEGED OF-  
8     FENSE BY COURT-MARTIAL OR CIVILIAN COURT.—

9                 (1) IN GENERAL.—Such section is further  
10         amended—

11                 (A) by redesignating subsections (d)  
12         through (h) as subsections (e) through (i), re-  
13         spectively; and

14                 (B) by inserting after subsection (c) the  
15         following new subsection (d):

16         “(d) DUTY TO DETERMINE VICTIM’S PREFERENCE  
17     FOR PROSECUTION OF AN ALLEGED COVERED OFFENSE  
18     BY COURT-MARTIAL OR CIVILIAN COURT.—(1) In pro-  
19         viding legal consultation and representation to a victim  
20         under this section in connection with an alleged covered  
21         offense that occurs in the United States, a Special Vic-  
22         tims’ Counsel shall have the duty—

23                 “(A) to solicit the victim’s preference regarding  
24         whether the offense should be prosecuted by court-

1 martial or in a civilian court with jurisdiction over  
2 the offense; and

3                 “(B) to make the victim’s preference, if offered,  
4 known to appropriate military prosecutors.

5                 “(2) Any consultation by a Special Victims’ Counsel  
6 pursuant to paragraph (1) shall occur in accordance with  
7 the process for such consultation established pursuant to  
8 section 534(b) of the Carl Levin and Howard P. ‘Buck’  
9 McKeon National Defense Authorization Act for Fiscal  
10 Year 2015 (10 U.S.C. 1044e note) or such other process  
11 as the Secretary of Defense shall establish for that pur-  
12 pose.”.

13                 (2) CONFORMING AMENDMENT.—Paragraph  
14 (11) of subsection (b) of such section, as redesign-  
15 nated by subsection (d)(1) of this section, is amend-  
16 ed by striking “subsection (h)” and inserting “sub-  
17 section (i)”.

18 (f) PERSONNEL AND TRAINING.—

19                 (1) PERSONNEL.—Commencing October 1,  
20 2019, each Secretary concerned shall establish and  
21 maintain such additional military and civilian billets  
22 for legal counsel and paralegals as such Secretary  
23 considers appropriate in order to ensure that each  
24 Armed Force under the jurisdiction of such Sec-  
25 retary is appropriately staffed to provide legal coun-

1       sel and assistance required under section 1044e of  
2       title 10, United States Code, by reason of the  
3       amendments made by this section by not later than  
4       September 30, 2025.

5               (2) TRAINING.—Each Secretary concerned shall  
6       provide military and civilian legal personnel under  
7       the jurisdiction of such Secretary such training as  
8       the Secretary considers appropriate for the provision  
9       of legal counsel and assistance required under sec-  
10       tion 1044e of title 10, United States Code, by rea-  
11       son of the amendments made by this section. To the  
12       extent practicable, the training provided pursuant to  
13       this paragraph shall be uniform across the Armed  
14       Forces.

15               (3) CONSULTATION.—Each Secretary concerned  
16       shall consult with the Judge Advocate General con-  
17       cerned regarding the additional number of billets re-  
18       quired pursuant to paragraph (1) and the training  
19       to be provided pursuant to paragraph (2).

20               (4) REPORTS.—Not later than 180 days after  
21       the date of the enactment of this Act, each Secretary  
22       concerned shall submit to the congressional defense  
23       committees a report setting forth the plan of such  
24       Secretary to modify the Special Victims' Counsel  
25       program under the jurisdiction of such Secretary in

1 order to meet the requirement in paragraph (1) by  
2 the deadline specified in that paragraph. Each re-  
3 port shall set forth, for the Special Victims' Counsel  
4 program concerned, the number of additional mili-  
5 tary billets and additional civilian billets the Sec-  
6 etary concerned requires to establish and maintain  
7 under paragraph (1) in order to meet the require-  
8 ment in that paragraph by the deadline specified in  
9 that paragraph.

10 (5) DEFINITIONS.—In this subsection:

11 (A) The term “Secretary concerned” has  
12 the meaning given that term in section  
13 101(a)(9) of title 10, United States Code.

14 (B) The term “Judge Advocate General”  
15 has the meaning given that term in section  
16 801(1) of title 10, United States Code (article  
17 1(1) of the Uniform Code of Military Justice).

18 **SEC. 4. CORRECTION OF MILITARY RECORDS AND DIS-**  
19 **CHARGE REVIEW FOR CERTAIN FORMER**  
20 **MEMBERS WHOSE NARRATIVE REASON FOR**  
21 **DISCHARGE WAS WRONGFULLY DESCRIBED**  
22 **AS PERSONALITY DISORDER.**

23 (a) CORRECTION OF MILITARY RECORDS.—Section  
24 1552 of title 10, United States Code, is amended—

1 (1) by redesignating subsections (i) and (j) as  
2 subsections (j) and (k), respectively; and

3 (2) by inserting after subsection (h) the fol-  
4 lowing new subsection (i):

5       “(i)(1) This subsection applies to a former member  
6 of the Armed Forces who is a military sexual trauma sur-  
7 vivor and suffers from post-traumatic stress disorder or  
8 traumatic brain injury and whose claim under this section  
9 is for review of the narrative reason for discharge of the  
10 former member as personality disorder, borderline per-  
11 sonal disorder, or a related non-disability mental condition  
12 (NDMC).

13       “(2) A claimant under this subsection shall support  
14 the claim with documentation or other evidence from a  
15 psychiatrist, psychologist, or other competent health care  
16 professional that the claimant does not have the disorder  
17 providing the narrative reason for the claimant’s dis-  
18 charge.

19       “(3) In the case of a claimant described in paragraph  
20 (1), a board established under subsection (a) shall—

21           “(A) review and give liberal consideration to the  
22        documentation or evidence of the claimant under  
23        paragraph (2); and

24               “(B) if the board determines that the claimant  
25        does not have the disorder, correct the military

1 records of the claimant to provide a narrative reason  
2 for the claimant's discharge as Secretarial Authority  
3 (or similar authority available at the time of the  
4 claimant's discharge if before the recognition of Sec-  
5 retarial Authority) or such other narrative reason  
6 (other than the disorder) as the board considers ap-  
7 propiate.”.

8 (b) DISCHARGE REVIEW.—Section 1553 of such title  
9 is amended—

10 (1) by redesignating subsection (f) as sub-  
11 section (g); and

12 (2) by inserting after subsection (e) the fol-  
13 lowing new subsection (f):

14 “(f) In the case of a former member of the Armed  
15 Forces who is a military sexual trauma survivor and suf-  
16 fers from post-traumatic stress disorder or traumatic  
17 brain injury and whose narrative reason for discharge or  
18 dismissal was personality disorder, borderline personality  
19 disorder, or a related non-disability mental condition  
20 (NDMC) and who submits to a board established under  
21 this section documentation or other evidence from a psy-  
22 chiatrist, psychologist, or other competent health care pro-  
23 fessional that the former member does not have the dis-  
24 order providing the narrative reason for the former mem-  
25 ber's discharge or dismissal, the board shall—

1           “(1) review and give liberal consideration to the  
2 documentation or evidence submitted by the former  
3 member; and

4           “(2) if the board determines that the former  
5 member does not have the disorder, change the nar-  
6 rative reason for the former member’s discharge or  
7 dismissal to Secretarial Authority or such other nar-  
8 rative reason (other than the disorder) as the board  
9 considers appropriate.”.

10           (c) REPORTS.—

11           (1) IN GENERAL.—Not later than 270 days  
12 after the date of the enactment of this Act, and an-  
13 nually thereafter for the next four years, each Sec-  
14 retary concerned shall submit to Congress a report  
15 on the activities of boards for the correction of mili-  
16 tary records under subsection (i) of section 1552 of  
17 title 10, United States Code (as amended by sub-  
18 section (a) of this section), and of discharge review  
19 boards under subsection (f) of section 1553 of title  
20 10, United States Code (as amended by subsection  
21 (b) of this section), under the jurisdiction of such  
22 Secretary during the one-year period ending on the  
23 date of such report. Each report shall include the  
24 following:

25           (A) For the period covered by such report:

1 (i) The number of claims submitted  
2 under such subsection (i) to boards for the  
3 correction of military records under the ju-  
4 risdiction of such Secretary, and the num-  
5 ber of claims for which relief was granted.

6 (ii) The number of claims submitted  
7 under such subsection (f) to discharge re-  
8 view boards under the jurisdiction of such  
9 Secretary, and the number of claims for  
10 which relief was granted.

20 SEC. 5. INCLUSION OF INTIMATE PARTNER VIOLENCE  
21 AMONG SUPPORTING RATIONALES FOR CER-  
22 TAIN CLAIMS FOR CORRECTIONS OF MILI-  
23 TARY RECORDS AND DISCHARGE REVIEW.

24 (a) CORRECTION OF MILITARY RECORDS.—Section  
25 1552(h)(1) of title 10, United States Code, is amended

1 by striking “or military sexual trauma” and inserting “,  
2 military sexual trauma, or intimate partner violence”.

3 (b) DISCHARGE REVIEW.—Section 1553(d)(3)(B) of  
4 such title is amended by striking “or military sexual trau-  
5 ma” and inserting “, military sexual trauma, or intimate  
6 partner violence”.

7 **SEC. 6. TRAINING OF MEMBERS OF BOARDS FOR CORREC-**  
8 **TION OF MILITARY RECORDS AND DIS-**  
9 **CHARGE REVIEW BOARDS ON MILITARY SEX-**  
10 **UAL TRAUMA, INTIMATE PARTNER VIO-**  
11 **LENCE, AND RELATED MATTERS.**

12 (a) BOARDS FOR CORRECTION OF MILITARY  
13 RECORDS.—The curriculum of training for members of  
14 boards for the correction of military records under section  
15 534(c) of the National Defense Authorization Act for Fis-  
16 cal Year 2017 (10 U.S.C. 1552 note) shall include train-  
17 ing on each of the following:

18 (1) Military sexual trauma.  
19 (2) Intimate partner violence.  
20 (3) The various responses of individuals to  
21 trauma.

22 (b) DISCHARGE REVIEW BOARDS.—

23 (1) IN GENERAL.—Each Secretary concerned  
24 shall develop and provide training for members of  
25 discharge review boards under section 1553 of title

1 10, United States Code, that are under the jurisdiction  
2 of such Secretary on each of the following:

3 (A) Military sexual trauma.  
4 (B) Intimate partner violence.  
5 (C) The various responses of individuals to  
6 trauma.

7 (2) UNIFORMITY OF TRAINING.—The Secretary  
8 of Defense and the Secretary of Homeland Security  
9 shall jointly ensure that the training developed and  
10 provided pursuant to this subsection is, to the extent  
11 practicable, uniform.

12 (3) SECRETARY CONCERNED DEFINED.—In this  
13 subsection, the term “Secretary concerned” has the  
14 meaning given that term in section 101(a)(9) of title  
15 10, United States Code.

16 **SEC. 7. REPORT ON ESTABLISHMENT OF GUARDIAN AD**  
17 **LITEM PROGRAM FOR CERTAIN MILITARY**  
18 **DEPENDENTS WHO ARE VICTIM OR WITNESS**  
19 **OF OFFENSES UNDER THE UNIFORM CODE**  
20 **OF MILITARY JUSTICE INVOLVING ABUSE OR**  
21 **EXPLOITATION.**

22 (a) REPORT REQUIRED.—

23 (1) IN GENERAL.—Not later than one year  
24 after the date of the enactment of this Act, the Secretary  
25 of Defense shall submit to the Committees on

1       Armed Services of the Senate and the House of Rep-  
2       resentatives a report setting forth an assessment of  
3       the feasibility and advisability of establishing a  
4       guardian ad litem program for military dependents  
5       described in paragraph (2) who are a victim or wit-  
6       ness of an offense under chapter 47 of title 10,  
7       United States Code (the Uniform Code of Military  
8       Justice), that involves an element of abuse or exploi-  
9       tation in order to protect the best interests of such  
10      dependents in a court-martial of such offense.

11                   (2) COVERED DEPENDENTS.—The military de-  
12       pendents described in this paragraph are as follows:

13                   (A) Military dependents under 12 years of  
14       age.

15                   (B) Military dependents who lack mental  
16       or other capacity.

17                   (b) ELEMENTS.—The report required by subsection

18       (a) shall include the following:

19                   (1) An assessment of the feasibility and advis-  
20       ability of establishing a guardian ad litem program  
21       as described in subsection (a).

22                   (2) If establishment of the guardian ad litem  
23       program is considered feasible and advisable, the fol-  
24       lowing:

4 (i) Any memoranda of understanding  
5 between the Department of Defense and  
6 State and local authorities required for  
7 purposes of the program.

8 (ii) The personnel, funding, and other  
9 resources required for purposes of the pro-  
10 gram.

11 (B) Best practices for the program (as de-  
12 termined in consultation with appropriate civil-  
13 ian experts on child advocacy).

14 (C) Such recommendations for legislative  
15 and administration action to implement the pro-  
16 gram as the Secretary considers appropriate.

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