

116TH CONGRESS
2D SESSION

H. R. 8270

To amend title 10, United States Code, to improve the responses of the Department of Defense to sex-related offenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2020

Ms. SPEIER (for herself, Mr. MULLIN, Ms. GARCIA of Texas, Mr. CARTER of Texas, Ms. ESCOBAR, Mr. OLSON, Mr. CISNEROS, Mr. BALDERSON, Mr. CROW, Mr. HURD of Texas, Mr. KIM, Mr. CASTRO of Texas, Ms. PRESSLEY, Mr. DOGGETT, Mr. HASTINGS, Mr. MALINOWSKI, Mr. VELA, Ms. NORTON, Mr. BEYER, Mr. CUELLAR, Mr. GARAMENDI, Mrs. HAYES, Ms. GABBARD, Ms. OCASIO-CORTEZ, Ms. HAALAND, Mrs. CAROLYN B. MALONEY of New York, Mr. THOMPSON of California, Ms. SHERRILL, Mr. RASKIN, Mr. BROWN of Maryland, Mr. GONZALEZ of Texas, Mr. MCGOVERN, Ms. ROYBAL-ALLARD, Mr. PANETTA, Ms. SCANLON, Ms. ESHOO, Mrs. TRAHAN, Mr. GRIJALVA, Ms. VELÁZQUEZ, Mr. SIRES, Mrs. WATSON COLEMAN, Ms. KUSTER of New Hampshire, Mr. GALLEGO, Mr. ROSE of New York, Mr. VEASEY, Ms. KENDRA S. HORN of Oklahoma, Ms. CASTOR of Florida, Mr. CARSON of Indiana, Ms. PINGREE, Mr. CÁRDENAS, Ms. LEE of California, Mr. WELCH, Mrs. TORRES of California, Mr. KHANNA, Mr. CORREA, Mrs. DINGELL, Mr. O'HALLERAN, Ms. SPANBERGER, Mr. LYNCH, Mr. LARSON of Connecticut, Mrs. LESKO, Ms. JACKSON LEE, Mr. BLUMENAUER, Mr. GARCÍA of Illinois, Mr. COURTNEY, Mrs. LAWRENCE, Ms. BROWNLEY of California, Ms. FRANKEL, Ms. BONAMICI, Mr. COOPER, Mr. DANNY K. DAVIS of Illinois, Mr. CONNOLLY, Ms. MOORE, Ms. WILSON of Florida, Ms. CLARK of Massachusetts, Mr. HECK, Ms. MENG, Ms. KAPTUR, Mr. LOWENTHAL, Ms. WILD, Mr. RUPPERSBERGER, Ms. MCCOLLUM, Mr. TAKANO, Ms. TLAIB, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. EVANS, Ms. JAYAPAL, Mr. TRONE, Ms. DELAURO, Mr. ESPAILLAT, Mr. COX of California, Ms. WASSERMAN SCHULTZ, Mrs. BUSTOS, Ms. ADAMS, Mr. HIGGINS of New York, Mr. CRIST, Ms. LOFGREN, Mr. KILDEE, Mr. TED LIEU of California, and Mr. BRINDISI) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to improve the responses of the Department of Defense to sex-related offenses, 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 “I am Vanessa Guillén
 5 Act of 2020”.

6 **SEC. 2. MODIFICATION OF AUTHORITY TO DETERMINE TO**
 7 **PROCEED TO TRIAL BY COURT-MARTIAL ON**
 8 **CHARGES INVOLVING SEX-RELATED OF-**
 9 **FENSES.**

10 (a) **ROLE OF OFFICE OF THE CHIEF PROSECUTOR**
 11 **IN DETERMINATION TO PROCEED TO TRIAL ON CHARGE**
 12 **INVOLVING SEX-RELATED OFFENSE.—**

13 (1) **REFERRAL AND DETERMINATIONS BY OF-**
 14 **FICE OF THE CHIEF PROSECUTOR.—**Section 834 of
 15 title 10, United States Code (article 34 of the Uni-
 16 form Code of Military Justice) is amended—

17 (A) by redesignating subsection (d) as sub-
 18 section (e); and

19 (B) by inserting after the subsection (c)
 20 the following new subsection (d):

1 “(d) REFERRAL TO OFFICE OF THE CHIEF PROS-
2 ECUTOR.—(1) In the case of a charge relating to a sex-
3 related offense, in addition to referring the charge to the
4 staff judge advocate under subsection (a), the convening
5 authority shall refer, as soon as reasonably practicable, the
6 charge to the Office of the Chief Prosecutor of the armed
7 force of which the accused is a member to make the deter-
8 mination required by paragraph (3). The actions of the
9 Office of the Chief Prosecutor under this subsection
10 whether or not to try charges by court-martial shall be
11 free of unlawful or unauthorized influence or coercion.

12 “(2) For purposes of this subsection, the term ‘sex-
13 related offense’ means any of the following:

14 “(A) An offense covered by section 920, 920a,
15 920b, 920c, or 920d of this title (article 120, 120a,
16 120b, 120c, or 120d).

17 “(B) A conspiracy to commit an offense speci-
18 fied in subparagraph (A) as punishable under sec-
19 tion 881 of this title (article 81).

20 “(C) A solicitation to commit an offense speci-
21 fied in subparagraph (A) as punishable under sec-
22 tion 882 of this title (article 82).

23 “(D) An attempt to commit an offense specified
24 in subparagraphs (A) through (C) as punishable
25 under section 880 of this title (article 80).

1 “(3) The Office of the Chief Prosecutor shall make
2 a determination regarding whether a charge relating to a
3 sex-related offense should be referred to trial. If the Office
4 of the Chief Prosecutor makes a determination to try the
5 charge by court-martial, the Office of the Chief Prosecutor
6 also shall determine whether to try the charge by a general
7 court-martial convened under section 822 of this title (ar-
8 ticle 22) or a special court-martial convened under section
9 823 of this title (article 23).

10 “(4) A determination under paragraph (3) to try a
11 charge relating to a sex-related offense by court-martial
12 shall include a determination to try all known offenses,
13 including lesser included offenses.

14 “(5) The determination to try a charge relating to
15 a sex-related offense by court-martial under paragraph
16 (3), and by type of court-martial, shall be binding on any
17 applicable convening authority for a trial by court-martial
18 on the charge.

19 “(6) A determination under paragraph (3) not to pro-
20 ceed to trial on a charge relating to a sex-related offense
21 by general or special court-martial shall not operate to ter-
22 minate or otherwise alter the authority of commanding of-
23 ficers to refer such charge for trial by summary court-
24 martial convened under section 824 of this title (article
25 24), or to impose non-judicial punishment in connection

1 with the conduct covered by the charge as authorized by
2 section 815 of this title (article 15).

3 “(7) Nothing in this subsection shall be construed to
4 alter or affect the disposition of charges under this chapter
5 (the Uniform Code of Military Justice) that allege an of-
6 fense triable by court-martial under this chapter for which
7 the maximum punishment authorized under this chapter
8 includes confinement for one year or less.

9 “(8) This subsection does not apply to the Coast
10 Guard when it is not operating as a service in the Depart-
11 ment of the Navy.”.

12 (2) APPOINTMENT OF CHIEF PROSECUTOR.—

13 For any Armed Force (other than the Coast Guard)
14 for which the position of Chief Prosecutor does not
15 exist as of the date of the enactment of this Act, the
16 Judge Advocate General of that Armed Force shall
17 establish the position of Chief Prosecutor and ap-
18 point as the Chief Prosecutor a commissioned officer
19 in the grade of O-6 or above who has significant ex-
20 perience prosecuting sexual assault trials by court-
21 martial.

22 (b) CHIEF PROSECUTOR AUTHORITY TO CONVENE
23 ARTICLE 32 PRELIMINARY HEARINGS.—Section 832(a) of
24 title 10, United States Code (article 32(a) of the Uniform

1 Code of Military Justice), is amended by adding at the
2 end the following new paragraph:

3 “(3) The Office of the Chief Prosecutor of an armed
4 force may order a preliminary hearing under this section
5 in the event of an allegation of a sex-related offense (as
6 defined in section 834(d)(2) of this title (article 34(d)(2)))
7 involving a member of that armed force. This paragraph
8 does not apply to the Coast Guard when it is not operating
9 as a service in the Department of the Navy.”.

10 (c) MODIFICATION OF OFFICERS AUTHORIZED TO
11 CONVENE GENERAL AND SPECIAL COURTS-MARTIAL.—

12 (1) IN GENERAL.—Section 822(a) of title 10,
13 United States Code (article 22(a) of the Uniform
14 Code of Military Justice) is amended—

15 (A) by redesignating paragraphs (8) and
16 (9) as paragraphs (9) and (10), respectively;
17 and

18 (B) by inserting after paragraph (7) the
19 following new paragraph (8):

20 “(8) the officers in the offices established pur-
21 suant to section 546(c)(3) of the National Defense
22 Authorization Act for Fiscal Year 2016 or officers in
23 the grade of O–6 or higher who are assigned such
24 responsibility by the Chief of Staff of the Army, the
25 Chief of Naval Operations, the Chief of Staff of the

1 Air Force, or the Commandant of the Marine Corps,
2 but only with respect to a sex-related offense (as de-
3 fined in section 834(d)(2) of this title (article
4 34(d)(2)));”.

5 (2) NO EXERCISE BY OFFICERS IN CHAIN OF
6 COMMAND OF ACCUSED OR VICTIM.—Section 822 of
7 title 10, United States Code (article 22 of the Uni-
8 form Code of Military Justice) is amended by adding
9 at the end the following new subsection:

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

13 (3) OFFICES OF CHIEFS OF STAFF ON COURTS-
14 MARTIAL.—

15 (A) OFFICES REQUIRED.—The Chief of
16 Staff of the Army, the Chief of Naval Oper-
17 ations, the Chief of Staff of the Air Force, or
18 the Commandant of the Marine Corps shall es-
19 tablish an office to do the following:

20 (i) To convene general and special
21 courts-martial under sections 822 and 823
22 of title 10, United States Code (articles 22
23 and 23 of the Uniform Code of Military
24 Justice), pursuant to paragraph (8) of sec-
25 tion 822(a) of title 10, United States Code

1 (article 22(a) of the Uniform Code of Military
2 Justice), as amended by paragraph
3 (1), with respect to a sex-related offense
4 (as defined in section 834(d)(2) of title 10,
5 United States Code (article 34(d)(2) of the
6 Uniform Code of Military Justice)).

7 (ii) To detail under section 825 of
8 title 10, United States Code (article 25 of
9 the Uniform Code of Military Justice),
10 members of courts-martial convened as de-
11 scribed in clause (i).

12 (B) PERSONNEL.—The personnel of each
13 office established under subparagraph (A) shall
14 consist of such members of the Armed Forces
15 and civilian personnel of the Department of De-
16 fense as may be detailed or assigned to the of-
17 fice by the Chief of Staff or Commandant con-
18 cerned. The members and personnel so detailed
19 or assigned, as the case may be, shall be de-
20 tailed or assigned from personnel billets in ex-
21 istence on the date of the enactment of this
22 Act.

23 (d) IMPLEMENTATION AND EFFECTIVE DATE.—

24 (1) FUNDING SOURCE.—The Secretaries of the
25 military departments shall carry out subsections (a),

1 (b), and (c) (and the amendments made by such
2 subsections) using funds appropriated after the date
3 of enactment of this Act and otherwise available to
4 the Secretary of the military department concerned.

5 (2) POLICIES AND PROCEDURES.—

6 (A) IN GENERAL.—The Secretaries of the
7 military departments shall revise policies and
8 procedures as necessary to comply with this sec-
9 tion.

10 (B) UNIFORMITY.—The General Counsel
11 of the Department of Defense shall review the
12 policies and procedures revised under this para-
13 graph in order to ensure that any lack of uni-
14 formity in policies and procedures, as so re-
15 vised, among the military departments does not
16 render unconstitutional any policy or procedure,
17 as so revised.

18 (3) MANUAL FOR COURTS-MARTIAL.—The Sec-
19 retary of Defense shall recommend such changes to
20 the Manual for Courts-Martial as are necessary to
21 ensure compliance with this section.

22 (4) EFFECTIVE DATE AND APPLICABILITY.—

23 The amendments made by this section shall take ef-
24 fect on the first day of the first month beginning
25 after the 2-year period following the date of the en-

1 actment of this Act, and shall apply with respect to
 2 charges preferred under section 830 of title 10,
 3 United States Code (article 30 of the Uniform Code
 4 of Military Justice), on or after such effective date.

5 **SEC. 3. PUNITIVE ARTICLE ON SEXUAL HARASSMENT AND**
 6 **RELATED INVESTIGATION MATTERS.**

7 (a) PUNITIVE ARTICLE ON SEXUAL HARASSMENT.—

8 (1) IN GENERAL.—Subchapter X of chapter 47,
 9 United States Code (the Uniform Code of Military
 10 Justice), is amended by inserting after section 920c
 11 (article 120c) the following new section (article):

12 **“§ 920d. Art. 120d. Sexual harassment**

13 “(a) IN GENERAL.—Any person subject to this chap-
 14 ter who commits sexual harassment against another per-
 15 son shall be punished as a court-martial may direct.

16 “(b) SEXUAL HARASSMENT DEFINED.—

17 “(1) In this section term ‘sexual harassment’
 18 means conduct that takes place in a circumstance
 19 described in paragraph (2) that takes the form of—

20 “(A) a sexual advance;

21 “(B) a request for sexual favors; or

22 “(C) any other conduct of a sexual nature.

23 “(2) A circumstance described in this para-
 24 graph is a situation in which—

1 “(A) submission to the conduct involved is
2 made either explicitly or implicitly a term or
3 condition of employment;

4 “(B) submission to or rejection of such
5 conduct is used as the basis for an employment
6 decision affecting an individual’s employment;
7 or

8 “(C) such conduct unreasonably alters an
9 individual’s terms, conditions, or privileges of
10 employment, including by creating an intimi-
11 dating hostile, or offensive work environment,
12 as determined in accordance with paragraph
13 (3).

14 “(3) In determining, for purposes of paragraph
15 (2)(C), whether conduct constitutes sexual harass-
16 ment because the conduct unreasonably alters an in-
17 dividual’s terms, conditions, or privileges of employ-
18 ment, including by creating an intimidating, hostile,
19 or offensive work environment, the following rules
20 shall apply:

21 “(A) The determination shall be made on
22 the basis of the record as a whole, according to
23 the totality of the circumstances. A single inci-
24 dent may constitute sexual harassment.

1 “(B) Incidents that may be sexual harass-
2 ment shall be considered in the aggregate,
3 with—

4 “(i) conduct of varying types (such as
5 expressions of sex-based hostility, requests
6 for sexual favors, and denial of employ-
7 ment opportunities due to sexual orienta-
8 tion) viewed in totality, rather than in iso-
9 lation; and

10 “(ii) conduct based on multiple pro-
11 tected characteristics (such as sex and
12 race) viewed in totality, rather than in iso-
13 lation.

14 “(C) The factors specified in this subpara-
15 graph are among the factors to be considered in
16 determining whether conduct constitutes sexual
17 harassment and are not meant to be exhaustive.
18 No one of those factors shall be considered to
19 be determinative in establishing whether con-
20 duct constitutes sexual harassment. Such fac-
21 tors are each of the following:

22 “(i) The frequency of the conduct.

23 “(ii) The duration of the conduct.

24 “(iii) The location where the conduct
25 occurred.

1 “(iv) The number of individuals en-
2 gaged in the conduct.

3 “(v) The nature of the conduct, which
4 may include physical, verbal, pictorial, or
5 visual conduct, and conduct that occurs in
6 person or is transmitted, such as electroni-
7 cally.

8 “(vi) Whether the conduct is threat-
9 ening.

10 “(vii) Any power differential between
11 the alleged harasser and the person alleg-
12 edly harassed.

13 “(viii) Any use of epithets, slurs, or
14 other conduct that is humiliating or de-
15 grading.

16 “(ix) Whether the conduct reflects
17 stereotypes about individuals in the pro-
18 tected class involved.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions at the beginning of such subchapter is amend-
21 ed by inserting after the item relating to section
22 920e (article 120e) the following new item:

“920d. 120d. Sexual harassment.”.

23 (b) INVESTIGATIONS OF SEXUAL HARASSMENT.—

24 (1) IN GENERAL.—Section 1561 of title 10,
25 United States Code, is amended to read as follows:

1 **“§ 1561. Complaints of sexual harassment: inde-**
2 **pendent investigation**

3 “(a) ACTION ON COMPLAINTS ALLEGING SEXUAL
4 HARASSMENT.—A commanding officer or officer in charge
5 of a unit, vessel, facility, or area of an armed force under
6 the jurisdiction of the Secretary of a military department,
7 who receives, from a member of the command or a mem-
8 ber under the supervision of the officer, a formal com-
9 plaint alleging sexual harassment by a member of the
10 armed forces shall, as soon as practicable after such re-
11 ceipt, forward the complaint to an independent investi-
12 gator.

13 “(b) COMMENCEMENT OF INVESTIGATION.—To the
14 extent practicable, an independent investigator shall com-
15 mence an investigation of a formal complaint of sexual
16 harassment not later than 72 hours after—

17 “(1) receiving a formal complaint of sexual har-
18 assment forwarded by a commanding officer or offi-
19 cer in charge under subsection (a); or

20 “(2) receiving a formal complaint of sexual har-
21 assment directly from a member of the armed forces.

22 “(c) DURATION OF INVESTIGATION.—To the extent
23 practicable, an investigation under subsection (b) shall be
24 completed not later than 14 days after the date on which
25 the investigation commences.

1 “(d) REPORT ON COMMAND INVESTIGATION.—To the
2 extent practicable, an independent investigator who com-
3 mences an investigation under subsection (b) shall—

4 “(1) submit a final report on the results of the
5 investigation, including any action taken as a result
6 of the investigation, to the officer described in sub-
7 section (a) not later than 20 days after the date on
8 which the investigation commenced; or

9 “(2) submit a report on the progress made in
10 completing the investigation to the officer described
11 in subsection (a) not later than 20 days after the
12 date on which the investigation commenced and
13 every 14 days thereafter until the investigation is
14 completed and, upon completion of the investigation,
15 then submit a final report on the results of the in-
16 vestigation, including any action taken as a result of
17 the investigation, to that officer.

18 “(e) DEFINITIONS.—In this section:

19 “(1) The term ‘formal complaint’ means a com-
20 plaint that an individual files in writing and attests
21 to the accuracy of the information contained in the
22 complaint.

23 “(2) The term ‘independent investigator’ means
24 a member of the armed forces or employee of the
25 Department of Defense—

1 “(A) who is outside the chain of command
2 of the complainant; and

3 “(B) whom the Secretary concerned deter-
4 mines is trained in the investigation of sexual
5 harassment.

6 “(3) The term ‘sexual harassment’ has the
7 meaning given that term in section 920d(b) of this
8 title (article 120d of the Uniform Code of Military
9 Justice).”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions at the beginning of chapter 80 of title 10,
12 United States Code, is amended by striking the item
13 relating to section 1561 and inserting the following
14 new item:

“1561. Complaints of sexual harassment: independent investigation.”.

15 (3) EFFECTIVE DATE.—The amendment to sec-
16 tion 1561 of such title made by this subsection
17 shall—

18 (A) take effect on the day that is two years
19 after the date of the enactment of this Act; and

20 (B) apply to any investigation of a formal
21 complaint of sexual harassment (as those terms
22 are defined in such section, as amended) made
23 on or after that date.

24 (4) REPORT ON IMPLEMENTATION.—Not later
25 than nine months after the date of the enactment of

1 this Act, each Secretary of a military department
2 shall submit to Congress a report on preparation of
3 that Secretary to implement the amendment to sec-
4 tion 1561 of such title made by this subsection.

5 **SEC. 4. CONFIDENTIAL REPORTING OF SEXUAL HARASS-**
6 **MENT.**

7 (a) ESTABLISHMENT.—Chapter 80 of title 10,
8 United States Code, is amended by inserting after section
9 1561a the following new section:

10 **“§ 1561b. Confidential reporting of sexual harassment**

11 “(a) ESTABLISHMENT.—Notwithstanding section
12 1561 of this title, the Secretary of Defense shall prescribe
13 regulations establishing a process by which a member of
14 an armed force under the jurisdiction of the Secretary of
15 a military department may confidentially allege a com-
16 plaint of sexual harassment to an individual outside the
17 immediate chain of command of that member.

18 “(b) RECEIPT OF COMPLAINT.—An individual des-
19 ignated to receive complaints under subsection (a)—

20 “(1) shall maintain the confidentiality of the
21 member alleging the complaint;

22 “(2) shall provide to the member alleging the
23 complaint the option—

24 “(A) to file a formal or informal report of
25 sexual harassment; and

1 “(B) to include reports related to such
2 complaint in the Catch a Serial Offender Pro-
3 gram; and

4 “(3) shall provide to the commander of the
5 complainant a report—

6 “(A) regarding the complaint; and

7 “(B) that does not contain any personally
8 identifiable information regarding the complain-
9 ant.

10 “(c) EDUCATION; TRACKING.—The Secretary of De-
11 fense shall educate members under the jurisdiction of the
12 Secretary of a military department regarding the process
13 established under this section and track complaints alleged
14 pursuant to such process.

15 “(d) REPORTING.—The Secretary of Defense shall
16 submit to the Committees on Armed Services of the Sen-
17 ate and House of Representatives an annual report con-
18 taining data (that does not contain any personally identifi-
19 able information) relating to complaints alleged pursuant
20 to the process established under this section.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 at the beginning of such chapter is amended by inserting
23 after the item relating to section 1561b the following new
24 item:

“1561b. Confidential reporting of sexual harassment.”.

1 (c) IMPLEMENTATION.—The Secretary shall carry
2 out section 1561b of title 10, United States Code, as
3 added by subsection (a), not later than one year after the
4 date of the enactment of this Act.

5 **SEC. 5. AUTHORIZATION OF CLAIMS BY MEMBERS OF THE**
6 **ARMED FORCES AGAINST THE UNITED**
7 **STATES THAT ARISE FROM SEX-RELATED OF-**
8 **FENSES.**

9 (a) ESTABLISHMENT.—

10 (1) IN GENERAL.—Chapter 163 of title 10,
11 United States Code, is amended by inserting after
12 section 2733a the following new section:

13 **“§ 2733b. Claims arising from sex-related offenses**

14 “(a) IN GENERAL.—Consistent with this section and
15 under such regulations as the Secretary of Defense shall
16 prescribe under subsection (d), the Secretary may allow,
17 settle, and pay a claim against the United States for per-
18 sonal injury or death of a claimant arising from—

19 “(1) a sex-related offense committed by a cov-
20 ered individual;

21 “(2) the negligent failure to prevent a sex-re-
22 lated offense committed by a covered individual; or

23 “(3) the negligent failure to investigate a sex-
24 related offense committed by a covered individual.

1 “(b) REQUIREMENT FOR CLAIMS.—A claim may be
2 allowed, settled, and paid under subsection (a) only if—

3 “(1) the claim is filed by the claimant who is
4 the victim of the sex-related offense, or by an au-
5 thorized representative on behalf of such claimant
6 who is deceased or otherwise unable to file the claim
7 due to incapacitation;

8 “(2) the claimant was a member of an armed
9 force under the jurisdiction of the Secretary of a
10 military department at the time of the sex-related
11 offense;

12 “(3) the claim is presented to the Department
13 in writing within two years after the claim accrues;

14 “(4) the claim is not allowed to be settled and
15 paid under any other provision of law; and

16 “(5) the claim is substantiated as prescribed in
17 regulations prescribed by the Secretary of Defense
18 under subsection (d).

19 “(c) PAYMENT OF CLAIMS.—(1) If the Secretary of
20 Defense determines, pursuant to regulations prescribed by
21 the Secretary under subsection (d), that a claim under this
22 section in excess of \$100,000 is meritorious, and the claim
23 is otherwise payable under this section, the Secretary may
24 pay the claimant \$100,000 and report any meritorious

1 amount in excess of \$100,000 to the Secretary of the
2 Treasury for payment under section 1304 of title 31.

3 “(2) Except as provided in paragraph (1), no claim
4 may be paid under this section unless the amount tendered
5 is accepted by the claimant in full satisfaction.

6 “(d) REGULATIONS.—(1) The Secretary of Defense
7 shall prescribe regulations to implement this section.

8 “(2) Regulations prescribed by the Secretary under
9 paragraph (1) shall include the following:

10 “(A) Policies and procedures to ensure the
11 timely, efficient, and effective processing and admin-
12 istration of claims under this section, including—

13 “(i) the filing, receipt, investigation, and
14 evaluation of a claim;

15 “(ii) the negotiation, settlement, and pay-
16 ment of a claim; and

17 “(iii) such other matters relating to the
18 processing and administration of a claim, in-
19 cluding an administrative appeals process, as
20 the Secretary considers appropriate.

21 “(B) Uniform standards consistent with gen-
22 erally accepted standards used in a majority of
23 States in adjudicating claims under chapter 171 of
24 title 28 (commonly known as the ‘Federal Tort
25 Claims Act’) to be applied to the evaluation, settle-

1 ment, and payment of claims under this section
2 without regard to the place of occurrence of the sex-
3 related offense giving rise to the claim or the mili-
4 tary department of the covered individual, and with-
5 out regard to foreign law in the case of claims aris-
6 ing in foreign countries, including uniform standards
7 to be applied to determinations with respect to—

8 “(i) whether an act or omission by a cov-
9 ered individual was negligent or wrongful, con-
10 sidering the specific facts and circumstances;

11 “(ii) whether the personal injury or death
12 of the claimant was caused by a negligent or
13 wrongful act or omission of a covered indi-
14 vidual;

15 “(iii) requirements relating to proof of
16 duty, breach of duty, and causation resulting in
17 compensable injury or loss, subject to such ex-
18 clusions as may be established by the Secretary
19 of Defense; and

20 “(iv) calculation of damages.

21 “(C) Such other matters as the Secretary con-
22 siders appropriate.

23 “(3) In order to implement expeditiously the provi-
24 sions of this section, the Secretary may prescribe the regu-
25 lations under this subsection—

1 “(A) by prescribing an interim final rule; and

2 “(B) not later than one year after prescribing
3 such interim final rule and considering public com-
4 ments with respect to such interim final rule, by pre-
5 scribing a final rule.

6 “(e) LIMITATIONS ON ATTORNEY FEES.—(1) No at-
7 torney shall charge, demand, receive, or collect for services
8 rendered, fees in excess of 20 percent of any claim paid
9 pursuant to this section.

10 “(2) Any attorney who charges, demands, receives,
11 or collects for services rendered in connection with a claim
12 under this section any amount in excess of the amount
13 allowed under paragraph (1), if recovery be had, shall be
14 fined not more than \$2,000, imprisoned not more than
15 one year, or both.

16 “(3) The United States shall not be liable for any
17 attorney fees of a claimant under this section.

18 “(f) ANNUAL REPORT.—Not less frequently than an-
19 nually until 2026, the Secretary of Defense shall submit
20 to the Committees on Armed Services of the Senate and
21 the House of Representatives a report—

22 “(1) indicating the number of claims processed
23 under this section;

24 “(2) indicating the resolution of each such
25 claim; and

1 “(3) describing any other information that may
2 enhance the effectiveness of the claims process under
3 this section.

4 “(g) DEFINITIONS.—In this section:

5 “(1) The term ‘covered individual’ means a
6 member of the armed forces or an employee of the
7 Department of Defense.

8 “(2) The term ‘sex-related offense’ has the
9 meaning given that term in section 834 of this
10 title.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions at the beginning of chapter 163 of such title
13 is amended by inserting after the item relating to
14 section 2733 the following new item:

“2733b. Claims arising from sex-related offenses.”.

15 (b) INTERIM BRIEFING ON DEVELOPMENT OF REGU-
16 LATIONS.—Not later than 180 days after the date of the
17 enactment of this Act, the Secretary of Defense shall pro-
18 vide to the Committees on Armed Services of the Senate
19 and the House of Representatives a briefing on the devel-
20 opment of regulations under section 2733b(d) of title 10,
21 United States Code, as added by subsection (a)(1).

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 2735 of such title is amended by in-
24 serting “2733b,” after “2733a,”.

1 (2) Section 1304(a)(3)(D) of title 31, United
2 States Code, is amended by inserting “2733b,” after
3 “2733a,”.

4 (d) EFFECTIVE DATE AND TRANSITION PROVI-
5 SION.—

6 (1) EFFECTIVE DATE.—The amendments made
7 by this section shall apply to any claim filed under
8 section 2733b of such title, as added by subsection
9 (a)(1), on or after January 1, 2021.

10 (2) TRANSITION.—Any claim filed in calendar
11 year 2020 shall be deemed to be filed within the
12 time period specified in section 2733b(b)(2) of such
13 title, as so added, if it is filed within three years
14 after it accrues.

15 **SEC. 6. REPORTS ON SEXUAL HARASSMENT/ASSAULT RE-**
16 **SPONSE PROGRAMS OF THE ARMED FORCES.**

17 (a) SECRETARY OF DEFENSE REPORT.—

18 (1) IN GENERAL.—Not later than 180 days
19 after the date of the enactment of this Act, the Sec-
20 retary of Defense shall submit to Congress a report
21 on the Sexual Harassment/Assault Response Pro-
22 grams of each military department.

23 (2) ELEMENTS.—The report required by para-
24 graph (1) shall include the following:

1 (A) A description and assessment of the
2 Sexual Harassment/Assault Response Program
3 of each military department including the fund-
4 ing for such program, the manner in which
5 such funding is allocated, and the elements of
6 such program that receive funding.

7 (B) A comparative assessment of the feasi-
8 bility and advisability of carrying out the Sex-
9 ual Harassment/Assault Response Programs
10 through each structure as follows:

11 (i) The current structure.

12 (ii) A structure involving discharge
13 through civilian personnel.

14 (iii) A structure involving discharge
15 though substantial numbers of contractors.

16 (iv) A structure involving the estab-
17 lishment of a military occupational spe-
18 cialty to permit members of the Armed
19 Forces to extend their time in a Sexual
20 Harassment/Assault Response Program
21 and professionalize their services (including
22 proper education and training as well as
23 continuing education).

24 (v) Any other structure the Secretary
25 considers appropriate.

1 (b) COMPTROLLER GENERAL OF THE UNITED
2 STATES REPORT.—

3 (1) IN GENERAL.—Not later than one year
4 after the date of the enactment of this Act, the
5 Comptroller General of the United States shall sub-
6 mit to Congress a report on the Sexual Harassment/
7 Assault Response Programs of the military depart-
8 ments.

9 (2) ELEMENTS.—The report required by para-
10 graph (1) shall include the following:

11 (A) An assessment by the Comptroller
12 General of the efficacy and impacts of the Sex-
13 ual Harassment/Assault Response Programs of
14 the military departments.

15 (B) Such recommendations as the Comp-
16 troller General considers appropriate for im-
17 provements to the Sexual Harassment/Assault
18 Response Programs.

19 **SEC. 7. GAO STUDY OF MEMBERS ABSENT WITHOUT LEAVE**
20 **OR ON UNAUTHORIZED ABSENCE.**

21 (a) STUDY; REPORT.—Not later than September 30,
22 2021, the Comptroller General of the United States shall
23 submit to the Committees on Armed Services of the Sen-
24 ate and House of Representatives a report containing the
25 results of a study regarding how the Secretaries of the

1 military departments handle cases of members of the
2 Armed Forces under their respective jurisdictions who are
3 absent without leave or on unauthorized absence.

4 (b) ELEMENTS.—The study under this section shall
5 include the following:

6 (1) The procedures and guidelines established
7 by each military department for the investigation of
8 such a case.

9 (2) The guidelines for distinguishing between—

10 (A) common cases;

11 (B) cases that may involve foul play or ac-
12 cident; and

13 (C) cases wherein the member may be in
14 danger.

15 (3) The current guidelines for cooperation and
16 coordination between military investigative agencies
17 and—

18 (A) local law enforcement agencies;

19 (B) Tribal law enforcement agencies; and

20 (C) Federal law enforcement agencies.

21 (4) The current guidelines for use of traditional
22 and social media in conjunction with such cases.

23 (5) Military resources available for such cases
24 and any apparent shortfalls in such resources.

1 (6) How the procedures for such cases vary be-
2 tween military departments.

3 (7) How the procedures described in paragraph
4 (6) vary from procedures used by local and Federal
5 law enforcement.

6 (8) Best practices for responding to and inves-
7 tigating such cases.

8 (9) Any other matter the Comptroller General
9 determines appropriate.

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