

116TH CONGRESS
1ST SESSION

S. 374

To amend title 38, United States Code, to expand health care and benefits from the Department of Veterans Affairs for military sexual trauma, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

Mr. TESTER (for himself, Ms. MURKOWSKI, Mr. BLUMENTHAL, Ms. SINEMA, Ms. BALDWIN, Ms. HASSAN, Mr. SANDERS, Mr. KING, Ms. DUCKWORTH, Ms. KLOBUCHAR, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to expand health care and benefits from the Department of Veterans Affairs for military sexual trauma, 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 “Servicemembers and
5 Veterans Empowerment and Support Act of 2019”.

1 **SEC. 2. TECHNOLOGICAL ABUSE DEFINED.**

2 Section 101 of title 38, United States Code, is
3 amended by adding at the end the following new para-
4 graph:

5 “(37) The term ‘technological abuse’ means be-
6 havior intended to harm, threaten, intimidate, con-
7 trol, stalk, harass, impersonate, or monitor another
8 person, except as otherwise permitted by law, that
9 occurs via the Internet, social networking sites, com-
10 puters, mobile devices, cellular telephones, apps, lo-
11 cation tracking devices, instant messages, text mes-
12 sages, or other forms of technology. Technological
13 abuse may include—

14 “(A) unwanted, repeated telephone calls,
15 text messages, instant messages, or social
16 media posts;

17 “(B) non-consensual access of email ac-
18 counts, texts or instant messaging accounts, so-
19 cial networking accounts, or cellular telephone
20 logs;

21 “(C) attempting to control or restrict a
22 person’s ability to access technology with the in-
23 tent to isolate them from support and social
24 connection;

1 “(D) using tracking devices or location
2 tracking software for the purpose of monitoring
3 or stalking another person’s location;

4 “(E) impersonation of a person with the
5 intent to deceive or cause harm through the use
6 of spoofing technology or the creation of fake
7 email or social media accounts; or

8 “(F) pressuring for or sharing of another
9 person’s private information, photographs, or
10 videos without their consent.”.

11 **SEC. 3. EXPANSION OF COVERAGE BY THE DEPARTMENT**
12 **OF VETERANS AFFAIRS OF COUNSELING AND**
13 **TREATMENT FOR SEXUAL TRAUMA TO IN-**
14 **CLUDE TECHNOLOGICAL ABUSE OF A SEX-**
15 **UAL NATURE.**

16 Section 1720D(a)(1) of title 38, United States Code,
17 is amended by inserting “technological abuse of a sexual
18 nature,” after “battery of a sexual nature,”.

19 **SEC. 4. STANDARD OF PROOF FOR SERVICE-CONNECTION**
20 **OF MENTAL HEALTH CONDITIONS RELATED**
21 **TO MILITARY SEXUAL TRAUMA.**

22 (a) STANDARD OF PROOF.—Section 1154 of title 38,
23 United States Code, is amended by adding at the end the
24 following new subsection:

1 “(c)(1) In the case of any veteran who claims that
2 a covered mental health condition was incurred in or ag-
3 gravated by military sexual trauma during active military,
4 naval, or air service, the Secretary shall accept as suffi-
5 cient proof of service-connection a diagnosis of such men-
6 tal health condition by a mental health professional to-
7 gether with satisfactory lay or other evidence of such trau-
8 ma and an opinion by the mental health professional that
9 such covered mental health condition is related to such
10 military sexual trauma, if consistent with the facts of such
11 service, notwithstanding the fact that there is no official
12 record of such incurrence or aggravation in such service,
13 and, to that end, shall resolve every reasonable doubt in
14 favor of the veteran. Service-connection of such covered
15 mental health condition may be rebutted by clear and con-
16 vincing evidence to the contrary. The reasons for granting
17 or denying service-connection in each case shall be re-
18 corded in full.

19 “(2) In this subsection:

20 “(A) The term ‘covered mental health condi-
21 tion’ means post-traumatic stress disorder, anxiety,
22 depression, or other mental health diagnosis de-
23 scribed in the current version of the Diagnostic and
24 Statistical Manual of Mental Disorders published by
25 the American Psychiatric Association that the Sec-

1 retary determines to be related to military sexual
2 trauma.

3 “(B) The term ‘military sexual trauma’ means,
4 with respect to a veteran, a physical assault of a sex-
5 ual nature, battery of a sexual nature, technological
6 abuse of a sexual nature, or sexual harassment in
7 line of duty.”.

8 (b) USE OF EVIDENCE IN EVALUATING DISABILITY
9 CLAIMS INVOLVING MILITARY SEXUAL TRAUMA.—

10 (1) IN GENERAL.—Subchapter VI of chapter 11
11 of such title is amended by adding at the end the
12 following new section:

13 **“§ 1164. Evaluation of claims involving military sex-**
14 **ual trauma**

15 “(a) NONMILITARY SOURCES OF EVIDENCE.—(1) In
16 carrying out section 1154(c) of this title, the Secretary
17 shall ensure that if a claim for compensation under this
18 chapter is received by the Secretary for a covered mental
19 health condition (as defined in such section) based on mili-
20 tary sexual trauma experienced by a veteran during active
21 military, naval, or air service, evidence from sources other
22 than official records of the Department of Defense regard-
23 ing the veteran’s service may corroborate the veteran’s ac-
24 count of the assault, battery, or harassment.

1 “(2) Examples of evidence described in paragraph (1)
2 include the following:

3 “(A) Records from law enforcement authorities,
4 rape crisis centers, mental health counseling centers,
5 hospitals, and physicians.

6 “(B) Pregnancy tests and tests for sexually
7 transmitted diseases.

8 “(C) Statements from family members, room-
9 mates, other members of the Armed Forces or vet-
10 erans, and clergy.

11 “(b) BEHAVIOR CHANGES CORROBORATING EVI-
12 DENCE.—(1) In carrying out section 1154(c) of this title,
13 the Secretary shall ensure that evidence of a behavior
14 change following military sexual trauma is one type of rel-
15 evant evidence that may be found in sources described in
16 such subsection.

17 “(2) Examples of behavior changes that may be rel-
18 evant evidence of military sexual trauma include the fol-
19 lowing:

20 “(A) A request for a transfer to another mili-
21 tary duty assignment.

22 “(B) Deterioration in work performance.

23 “(C) Substance abuse.

24 “(D) Episodes of depression, panic attacks, or
25 anxiety without an identifiable cause.

1 “(E) Unexplained economic or social behavior
2 changes.

3 “(c) NOTICE AND OPPORTUNITY TO SUPPLY EVI-
4 DENCE.—The Secretary may not deny a claim of a veteran
5 for compensation under this chapter for a covered mental
6 health condition that is based on military sexual trauma
7 without first—

8 “(1) advising the veteran that evidence de-
9 scribed in subsections (a) and (b) may constitute
10 credible corroborating evidence of the military sexual
11 trauma; and

12 “(2) allowing the veteran an opportunity to fur-
13 nish such corroborating evidence or advise the Sec-
14 retary of potential sources of such evidence.

15 “(d) REVIEW OF EVIDENCE.—In reviewing a claim
16 for compensation described in subsection (a)(1), for any
17 evidence received with such claim that is described in sub-
18 section (a) or (b), the Secretary may submit such evidence
19 to such medical or mental health professional as the Sec-
20 retary considers appropriate, including clinical and coun-
21 seling experts employed by the Department, to obtain a
22 credible opinion as to whether the evidence indicates that
23 military sexual trauma occurred.

24 “(e) POINT OF CONTACT.—The Secretary shall en-
25 sure that each document provided to a veteran relating

1 to a claim for compensation described in subsection (a)(1)
2 includes contact information for an appropriate point of
3 contact with the Department.

4 “(f) SPECIALIZED TEAMS.—(1) The Secretary shall
5 establish specialized teams to process claims for com-
6 pensation described in subsection (a)(1).

7 “(2) The Secretary shall ensure that members of
8 teams established under paragraph (1) are trained to iden-
9 tify markers indicating military sexual trauma.

10 “(3) In any case in which the Secretary obtains con-
11 flicting evidence relating to the substantiation of a claim
12 for compensation described in subsection (a)(1), the Sec-
13 retary shall give more credence to the evidence that is
14 more beneficial to the claimant.

15 “(g) DEFINITIONS.—In this section, the terms ‘cov-
16 ered mental health condition’ and ‘military sexual trauma’
17 has the meanings given such terms in section 1154(c) of
18 this title.”.

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

“1164. Evaluation of claims involving military sexual trauma.”.

22 (c) ANNUAL REPORTS.—

23 (1) IN GENERAL.—Subchapter VI of chapter 11
24 of title 38, United States Code, as amended by sub-

1 section (b), is further amended by adding at the end
2 the following new section:

3 **“§ 1165. Annual reports on claims for disabilities in-**
4 **curring or aggravated by military sexual**
5 **trauma**

6 “(a) REPORTS.—Not later than March 1, 2020, and
7 not less frequently than once each year thereafter through
8 2027, the Secretary shall submit to Congress a report on
9 covered claims submitted during the previous fiscal year
10 to identify and track the consistency of decisions across
11 regional offices.

12 “(b) ELEMENTS.—Each report under subsection (a)
13 shall include the following:

14 “(1) The number of covered claims submitted
15 to or considered by the Secretary during the fiscal
16 year covered by the report.

17 “(2) Of the covered claims listed under para-
18 graph (1), the number and percentage of such
19 claims—

20 “(A) submitted by each sex;

21 “(B) that were approved, including the
22 number and percentage of such approved claims
23 submitted by each sex; and

1 “(C) that were denied, including the num-
2 ber and percentage of such denied claims sub-
3 mitted by each sex.

4 “(3) Of the covered claims listed under para-
5 graph (1) that were approved, the number and per-
6 centage, disaggregated by sex, of claims assigned to
7 each rating percentage.

8 “(4) Of the covered claims listed under para-
9 graph (1) that were denied—

10 “(A) the three most common reasons given
11 by the Secretary under section 5104(b)(1) of
12 this title for such denials; and

13 “(B) the number of denials that were
14 based on the failure of a veteran to report for
15 a medical examination.

16 “(5) The number of covered claims that, as of
17 the end of the fiscal year covered by the report, are
18 pending and, separately, the number of such claims
19 on appeal.

20 “(6) For the fiscal year covered by the report,
21 the average number of days that covered claims take
22 to complete, beginning on the date on which the
23 claim is submitted.

24 “(7) A description of the training that the Sec-
25 retary provides to employees of the Veterans Bene-

1 fits Administration, or such contractors or other in-
2 dividuals as the Secretary considers appropriate,
3 specifically with respect to covered claims, including
4 the frequency, length, and content of such training.

5 “(c) DEFINITIONS.—In this section:

6 “(1) The term ‘covered claims’ means claims
7 for disability compensation submitted to the Sec-
8 retary based on a covered mental health condition
9 alleged to have been incurred or aggravated by mili-
10 tary sexual trauma.

11 “(2) The terms ‘covered mental health condi-
12 tion’ and ‘military sexual trauma’ have the meanings
13 given such terms in section 1154(c) of this title.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions at the beginning of such chapter, as amended
16 by subsection (b), is further amended by adding at
17 the end the following new item:

“1165. Annual reports on claims for disabilities incurred or aggravated by mili-
tary sexual trauma.”.

18 (d) EFFECTIVE DATE.—Subsection (c) of section
19 1154 of title 38, United States Code, as added by sub-
20 section (a), shall apply with respect to any claim for dis-
21 ability compensation under laws administered by the Sec-
22 retary of Veterans Affairs for which no final decision has
23 been made before the date of the enactment of this Act.

1 **SEC. 5. INFORMATION FOR MEMBERS OF THE ARMED**
2 **FORCES REGARDING AVAILABILITY OF SERV-**
3 **ICES AT THE DEPARTMENT OF VETERANS AF-**
4 **FAIRS.**

5 (a) IN GENERAL.—The Secretary of Defense shall in-
6 form members of the Armed Forces, using mechanisms
7 available to the Secretary, of the eligibility of such mem-
8 bers for services at the Department of Veterans Affairs.

9 (b) INFORMATION FROM SEXUAL ASSAULT RE-
10 SPONSE COORDINATORS.—The Secretary shall ensure that
11 Sexual Assault Response Coordinators of the Department
12 of Defense advise members of the Armed Forces who re-
13 port instances of military sexual trauma regarding the eli-
14 gibility of such members for services at the Department
15 of Veterans Affairs.

16 (c) MILITARY SEXUAL TRAUMA DEFINED.—In this
17 section, the term “military sexual trauma” means psycho-
18 logical trauma described in section 1720D(a)(1) of title
19 38, United States Code.

20 **SEC. 6. SENSE OF CONGRESS ON ACCESS TO DEPARTMENT**
21 **OF VETERANS AFFAIRS FACILITIES BY RE-**
22 **SERVISTS FOR COUNSELING AND TREAT-**
23 **MENT RELATING TO MILITARY SEXUAL TRAU-**
24 **MA.**

25 (a) IN GENERAL.—It is the sense of Congress that
26 members of the reserve components of the Armed Forces,

1 including members of the National Guard, should be able
2 to access all health care facilities of the Department of
3 Veterans Affairs to receive counseling and treatment relat-
4 ing to military sexual trauma and not just at Vet Centers.

5 (b) DEFINITIONS.—In this section:

6 (1) MILITARY SEXUAL TRAUMA.—The term
7 “military sexual trauma” means psychological trau-
8 ma described in section 1720D(a)(1) of title 38,
9 United States Code.

10 (2) VET CENTER.—The term “Vet Center” has
11 the meaning given that term in section 1712A(h) of
12 such title.

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