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S. 1520

To reform the disposition of charges and convening of courts-martial for certain offenses under the Uniform Code of Military Justice and increase the prevention of sexual assaults and other crimes in the military.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2021

Mrs. GILLIBRAND (for herself, Mr. GRASSLEY, Ms. ERNST, Mr. BLUMENTHAL, Mr. CRUZ, Mrs. SHAHEEN, Ms. BALDWIN, Mr. VAN HOLLEN, Mr. KING, Mr. BRAUN, Mr. DURBIN, Ms. DUCKWORTH, Mr. BENNET, Mr. PAUL, Mr. COONS, Mr. KELLY, Mrs. FEINSTEIN, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEAHY, Ms. WARREN, Mr. WYDEN, Mr. PADILLA, Mr. MENENDEZ, Ms. HASSAN, Ms. LUMMIS, Mr. PETERS, Mr. CASEY, Mrs. CAPITO, Mr. WARNOCK, Mr. KAINE, Mr. TUBERVILLE, Ms. SMITH, Mr. HEINRICH, Ms. CORTEZ MASTO, Mr. BROWN, Mr. HICKENLOOPER, Mr. WARNER, Ms. COLLINS, Mr. BOOKER, Mr. TESTER, Mr. MERKLEY, and Mr. OSSOFF) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To reform the disposition of charges and convening of courts-martial for certain offenses under the Uniform Code of Military Justice and increase the prevention of sexual assaults and other crimes in the military.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Military Justice Im-
3 provement and Increasing Prevention Act of 2021”.

4 **SEC. 2. IMPROVEMENT OF DETERMINATIONS ON DISPOSI-**
5 **TION OF CHARGES FOR CERTAIN OFFENSES**
6 **UNDER UCMJ WITH AUTHORIZED MAXIMUM**
7 **SENTENCE OF CONFINEMENT OF MORE THAN**
8 **ONE YEAR.**

9 (a) IMPROVEMENT OF DETERMINATIONS.—

10 (1) MILITARY DEPARTMENTS.—With respect to
11 charges under chapter 47 of title 10, United States
12 Code (the Uniform Code of Military Justice), that
13 allege an offense specified in subsection (b) and not
14 excluded under subsection (c), the Secretary of De-
15 fense shall require the Secretaries of the military de-
16 partments to provide as described in subsection (d)
17 for the determinations as follows:

18 (A) Determinations under section 830 of
19 such chapter (article 30 of the Uniform Code of
20 Military Justice) on the preferral of charges.

21 (B) Determinations under section 830 of
22 such chapter (article 30 of the Uniform Code of
23 Military Justice) on the disposition of charges.

24 (C) Determinations under section 834 of
25 such chapter (article 34 of the Uniform Code of
26 Military Justice) on the referral of charges.

1 (2) HOMELAND SECURITY.—With respect to
 2 charges under chapter 47 of title 10, United States
 3 Code (the Uniform Code of Military Justice), that
 4 allege an offense specified in subsection (b) and not
 5 excluded under subsection (c) against a member of
 6 the Coast Guard (when it is not operating as a serv-
 7 ice in the Navy), the Secretary of Homeland Secu-
 8 rity shall provide as described in subsection (d) for
 9 the determinations as follows:

10 (A) Determinations under section 830 of
 11 such chapter (article 30 of the Uniform Code of
 12 Military Justice) on the preferral of charges.

13 (B) Determinations under section 830 of
 14 such chapter (article 30 of the Uniform Code of
 15 Military Justice) on the disposition of charges.

16 (C) Determinations under section 834 of
 17 such chapter (article 34 of the Uniform Code of
 18 Military Justice) on the referral of charges.

19 (3) RULE OF CONSTRUCTION.—This section
 20 shall not be construed to terminate or otherwise
 21 alter the authorities enumerated in any articles of
 22 the Uniform Code of Military Justice other than ar-
 23 ticles 30 and 34 (10 U.S.C. 830, 834).

24 (b) COVERED OFFENSES.—An offense specified in
 25 this subsection is an offense as follows:

1 (1)(A) Offenses under the following sections of
 2 chapter 47 of title 10, United States Code (the Uni-
 3 form Code of Military Justice), for which the max-
 4 imum punishment authorized under that chapter in-
 5 cludes confinement for more than one year: sections
 6 893a, 917a, 918, 919, 919a, 919b, 920, 920a, 920b,
 7 920c, 921, 921a, 921b, 922, 924, 924a, 924b, 925,
 8 926, 927, 928(b) and (c), 928a, 928b, 930, 931,
 9 931a, 931b, 931c, 931d, 931e, 931f, 931g, and 932
 10 (articles 93a, 117a, 118, 119, 119a, 119b, 120,
 11 120a, 120b, 120c, 121, 121a, 121b, 122, 124, 124a,
 12 124b, 125, 126, 127, 128(b) and (c), 128a, 128b,
 13 1230, 131, 131a, 131b, 131c, 131d, 131e, 131f,
 14 131g, and 132, respectively, of the Uniform Code of
 15 Military Justice).

16 (B) The offenses of child pornography, neg-
 17 ligent homicide, indecent conduct, indecent language
 18 communicated to any child under the age of 16
 19 years, and pandering and prostitution, as punishable
 20 under the general punitive article in 934 of such
 21 title (article 134 of the Uniform Code of Military
 22 Justice).

23 (2) A conspiracy to commit an offense specified
 24 in paragraph (1) as punishable under section 881 of

1 title 10, United States Code (article 81 of the Uni-
2 form Code of Military Justice).

3 (3) A solicitation to commit an offense specified
4 in paragraph (1) as punishable under section 882 of
5 title 10, United States Code (article 82 of the Uni-
6 form Code of Military Justice).

7 (4) An attempt to commit an offense specified
8 in paragraph (1) as punishable under section 880 of
9 title 10, United States Code (article 80 of the Uni-
10 form Code of Military Justice).

11 (c) EXCLUDED OFFENSES.—Subsection (a) does not
12 apply to an offense as follows:

13 (1) An offense under sections 883 through 917
14 of title 10, United States Code (articles 83 through
15 117 of the Uniform Code of Military Justice), but
16 not an offense under section 893a of such title (arti-
17 cle 93a of the Uniform Code of Military Justice).

18 (2) An offense under section 922a, 923, 923a,
19 or 928(a) of title 10, United States Code (articles
20 122a, 123, 123a, and 128(a) of the Uniform Code
21 of Military Justice).

22 (3) An offense under section 933 or 934 of title
23 10, United States Code (articles 133 and 134 of the
24 Uniform Code of Military Justice), but not the of-
25 fense of child pornography, negligent homicide, inde-

cent conduct, indecent language communicated to any child under the age of 16 years, or pandering and prostitution as punishable under the general punitive article in section 934 of such title (article 134 of the Uniform Code of Military Justice).

(4) A conspiracy to commit an offense specified in paragraphs (1) through (3) as punishable under section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice).

(5) A solicitation to commit an offense specified in paragraphs (1) through (3) as punishable under section 882 of title 10, United States Code (article 82 of the Uniform Code of Military Justice).

(6) An attempt to commit an offense specified in paragraphs (1) through (3) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

(d) REQUIREMENTS AND LIMITATIONS.—The disposition of charges covered by subsection (a) shall be subject to the following:

(1) The determination whether to cause charges to be preferred or refer such charges to a court-martial for trial, as applicable, shall be made by a commissioned officer of the Armed Forces designated as a court-martial convening authority in accordance

1 with regulations prescribed for purposes of this sub-
2 section from among commissioned officers of the
3 Armed Forces in grade O-6 or higher who—

4 (A) are available for detail as trial counsel
5 under section 827 of title 10, United States
6 Code (article 27 of the Uniform Code of Mili-
7 tary Justice);

8 (B) have significant experience in trials by
9 general or special court-martial; and

10 (C) are outside the chain of command of
11 the member subject to such charges.

12 (2) Upon a determination under paragraph (1)
13 to refer charges to a court-martial for trial, the offi-
14 cer making that determination shall determine
15 whether to refer such charges for trial by a general
16 court-martial convened under section 822 of title 10,
17 United States Code (article 22 of the Uniform Code
18 of Military Justice), or a special court-martial con-
19 vened under section 823 of title 10, United States
20 Code (article 23 of the Uniform Code of Military
21 Justice).

22 (3) A determination under paragraph (1) to
23 cause charges to be preferred or refer charges to a
24 court-martial for trial, as applicable, shall cover all
25 known offenses, including lesser included offenses.

1 (4) The determination to cause charges to be
2 preferred or refer charges to a court-martial for
3 trial, as applicable, under paragraph (1), and the
4 type of court-martial to which to refer under para-
5 graph (2), shall be binding on any applicable con-
6 vening authority for the referral of such charges.

7 (5) The actions of an officer described in para-
8 graph (1) in determining under that paragraph
9 whether or not to cause charges to be preferred or
10 refer charges to a court-martial for trial, as applica-
11 ble, shall be free of unlawful or unauthorized influ-
12 ence or coercion.

13 (6) The determination under paragraph (1) not
14 to refer charges to a general or special court-martial
15 for trial shall not operate to terminate or otherwise
16 alter the authority of commanding officers to refer
17 charges for trial by special court-martial under sec-
18 tion 823 of title 10, United States Code (article 23
19 of the Uniform Code of Military Justice) or sum-
20 mary court-martial convened under section 824 of
21 title 10, United States Code (article 24 of the Uni-
22 form Code of Military Justice), or to impose non-ju-
23 dicial punishment in connection with the conduct
24 covered by such charges as authorized by section

1 815 of title 10, United States Code (article 15 of the
2 Uniform Code of Military Justice).

3 (7) The determination under paragraph (1) to
4 refer charges to a general or special court-martial
5 shall not be subject to section 834 of title 10, United
6 States Code (article 34 of the Uniform Code of Mili-
7 tary Justice), provided that the officer making the
8 determination determines that—

9 (A) the specification alleges an offense
10 under the Uniform Code of Military Justice;

11 (B) there is probable cause to believe that
12 the accused committed the offense charged; and

13 (C) a court-martial would have jurisdiction
14 over the accused and the offense.

15 (e) CONSTRUCTION WITH CHARGES ON OTHER OF-
16 FENSES.—Nothing in this section shall be construed to
17 alter or affect the preferral, disposition, or referral author-
18 ity of charges under chapter 47 of title 10, United States
19 Code (the Uniform Code of Military Justice), that allege
20 an offense for which the maximum punishment authorized
21 under that chapter includes confinement for one year or
22 less, except for the offenses of child pornography, neg-
23 ligent homicide, indecent conduct, indecent language com-
24 municated to any child under the age of 16 years, and
25 pandering and prostitution as punishable under the gen-

1 eral punitive article in section 934 of such title (article
2 134 of the Uniform Code of Military Justice).

3 (f) POLICIES AND PROCEDURES.—

4 (1) IN GENERAL.—The Secretaries of the mili-
5 tary departments and the Secretary of Homeland
6 Security (with respect to the Coast Guard when it
7 is not operating as a service in the Navy) shall re-
8 vise policies and procedures as necessary to comply
9 with this section.

10 (2) UNIFORMITY.—The General Counsel of the
11 Department of Defense and the General Counsel of
12 the Department of Homeland Security shall jointly
13 review the policies and procedures revised under this
14 subsection in order to ensure that any lack of uni-
15 formity in policies and procedures, as so revised,
16 among the military departments and the Depart-
17 ment of Homeland Security does not render uncon-
18 stitutional any policy or procedure, as so revised.

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

23 (h) IMPROVED SPECIALIZATION OF CRIMINAL INVES-
24 TIGATORS.—The Secretary of Defense shall revise policies
25 and procedures as necessary to improve specialization of

1 criminal investigators to help increase the efficiency and
 2 effectiveness of sexual assault and domestic violence inves-
 3 tigations.

4 **SEC. 3. MODIFICATION OF OFFICERS AUTHORIZED TO CON-**
 5 **VENE GENERAL AND SPECIAL COURTS-MAR-**
 6 **TIAL FOR CERTAIN OFFENSES UNDER UCMJ**
 7 **WITH AUTHORIZED MAXIMUM SENTENCE OF**
 8 **CONFINEMENT OF MORE THAN ONE YEAR.**

9 (a) IN GENERAL.—Subsection (a) of section 822 of
 10 title 10, United States Code (article 22 of the Uniform
 11 Code of Military Justice), is amended—

12 (1) by redesignating paragraphs (8) and (9) as
 13 paragraphs (9) and (10), respectively; and

14 (2) by inserting after paragraph (7) the fol-
 15 lowing new paragraph (8):

16 “(8) with respect to offenses to which section
 17 2(a) of the Military Justice Improvement and In-
 18 creasing Prevention Act of 2021 applies, the officers
 19 in the offices established pursuant to section 3(c) of
 20 that Act or officers in the grade of O–6 or higher
 21 who are assigned such responsibility by the Chief of
 22 Staff of the Army, the Chief of Naval Operations,
 23 the Chief of Staff of the Air Force, the Com-
 24 mandant of the Marine Corps, or the Commandant
 25 of the Coast Guard;”.

1 (b) NO EXERCISE BY OFFICERS IN CHAIN OF COM-
 2 MAND OF ACCUSED OR VICTIM.—Such section (article) is
 3 further amended by adding at the end the following new
 4 subsection:

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

8 (c) OFFICES OF CHIEFS OF STAFF ON COURTS-MAR-
 9 TIAL.—

10 (1) OFFICES REQUIRED.—Each Chief of Staff
 11 of the Armed Forces or Commandant specified in
 12 paragraph (8) of section 822(a) of title 10, United
 13 States Code (article 22(a) of the Uniform Code of
 14 Military Justice), as amended by subsection (a),
 15 shall establish an office to do the following:

16 (A) To convene general and special courts-
 17 martial under sections 822 and 823 of title 10,
 18 United States Code (articles 22 and 23 of the
 19 Uniform Code of Military Justice), pursuant to
 20 paragraph (8) of section 822(a) of title 10,
 21 United States Code (article 22(a) of the Uni-
 22 form Code of Military Justice), as so amended,
 23 with respect to offenses to which section 2(a)
 24 applies.

1 (B) To detail under section 825 of title 10,
2 United States Code (article 25 of the Uniform
3 Code of Military Justice), members of courts-
4 martial convened as described in subparagraph
5 (A).

6 (2) PERSONNEL.—The personnel of each office
7 established under paragraph (1) shall consist of such
8 members of the Armed Forces and civilian personnel
9 of the Department of Defense, or such members of
10 the Coast Guard or civilian personnel of the Depart-
11 ment of Homeland Security, as may be detailed or
12 assigned to the office by the Chief of Staff or Com-
13 mandant concerned. The members and personnel so
14 detailed or assigned, as the case may be, shall be de-
15 tailed or assigned from personnel billets in existence
16 as of the effective date for this Act specified in sec-
17 tion 10.

18 **SEC. 4. DISCHARGE USING OTHERWISE AUTHORIZED PER-**
19 **SONNEL AND RESOURCES.**

20 (a) IN GENERAL.—The Secretaries of the military
21 departments and the Secretary of Homeland Security
22 (with respect to the Coast Guard when it is not operating
23 as a service in the Navy) shall carry out sections 2 and
24 3 using personnel, funds, and resources otherwise author-
25 ized by law.

1 (b) NO AUTHORIZATION OF ADDITIONAL PER-
 2 SONNEL OR RESOURCES.—Sections 2 and 3 shall not be
 3 construed as authorizations for personnel, personnel bil-
 4 lets, or funds for the discharge of the requirements in such
 5 sections.

6 **SEC. 5. MONITORING AND ASSESSMENT OF MODIFICATION**
 7 **OF AUTHORITIES BY DEFENSE ADVISORY**
 8 **COMMITTEE ON INVESTIGATION, PROSECU-**
 9 **TION, AND DEFENSE OF SEXUAL ASSAULT IN**
 10 **THE ARMED FORCES.**

11 Section 546(c) of the Carl Levin and Howard P.
 12 “Buck” McKeon National Defense Authorization Act for
 13 Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

14 (1) in paragraph (1)—

15 (A) by striking “on the investigation” and
 16 inserting “on the following:

17 “(A) The investigation”; and

18 (B) by adding at the end the following new
 19 subparagraph:

20 “(B) The implementation and efficacy of
 21 sections 2 through 4 of the Military Justice Im-
 22 provement and Increasing Prevention Act of
 23 2021 and the amendments made by such sec-
 24 tions.”; and

1 (2) in paragraph (2), by striking “paragraph
2 (1)” and inserting “paragraph (1)(A)”.

3 **SEC. 6. LIMITATION ON MODIFICATIONS TO SEXUAL AS-**
4 **SAULT REPORTING PROCEDURES.**

5 (a) IN GENERAL.—The Secretary of Defense may not
6 amend section 4 of enclosure 4 of Department of Defense
7 Instruction (DoDI) 6495.02, relating to Sexual Assault
8 Prevention and Response (SAPR) Program Procedures, or
9 otherwise prescribe any regulations or guidance relating
10 to the treatment and handling of unrestricted and re-
11 stricted reports of sexual assault, until 30 days after noti-
12 fying the congressional defense committees of the pro-
13 posed amendment or modification.

14 (b) CONGRESSIONAL DEFENSE COMMITTEES DE-
15 FINED.—In this section, the term “congressional defense
16 committees” has the meaning given the term in section
17 101(a) of title 10, United States Code.

18 **SEC. 7. PROFESSIONALIZATION OF MILITARY PROSECU-**
19 **TORS.**

20 (a) IN GENERAL.—The Secretary of Defense shall in-
21 crease enhanced and specialized training to certain pros-
22 ecutors on the proper conduct, presentation, and handling
23 of sexual assault and domestic violence cases.

24 (b) REPORT.—Not later than 180 days after the date
25 of the enactment of this Act, the Secretary of Defense

1 shall submit to the congressional defense committees a re-
2 port on the program implemented under subsection (a).

3 **SEC. 8. INCREASED TRAINING AND EDUCATION ON MILI-**
4 **TARY SEXUAL ASSAULT.**

5 (a) UNIFORMED OFFICERS AND SENIOR ENLISTED
6 LEADERS.—

7 (1) UNIFORMED OFFICERS.—All uniformed offi-
8 cers of the military services shall be required within
9 2 years of the date of the enactment of this Act to
10 complete training on military sexual assault preven-
11 tion equivalent to that provided to Sexual Assault
12 Prevention and Response Victim Advocates before
13 those officers may be considered for promotion to a
14 grade at or above O–5. A portion of this training
15 shall be in-person, facilitated training.

16 (2) ENLISTED LEADERS.—All senior enlisted
17 leaders of the military services will be required with-
18 in 2 years of the date of the enactment of this Act
19 to complete a training on military sexual assault
20 prevention equivalent to that provided to the Sexual
21 Assault Prevention and Response Victim Advocates
22 before enlisted service members may be considered
23 for promotion to a grade at or above E–9. A portion
24 of this training shall be in-person, facilitated train-
25 ing.

1 (b) OFFICER CANDIDATES AND ROTC.—

2 (1) IN GENERAL.—The United States Army
3 Cadet Command, the Naval Education and Training
4 Command, the Air Education and Training Com-
5 mand, and the Coast Guard Recruiting Command
6 shall carry out a program for increasing training on
7 the prevention of military sexual assault within cadet
8 ranks. A portion of this training shall be in-person,
9 facilitated training.

10 (2) REPORT ON DEVELOPMENT OF PLAN.—Not
11 later than 180 days after the date of the enactment
12 of this Act, the United States Army Cadet Com-
13 mand, the Naval Education and Training Command,
14 the Air Education and Training Command, and the
15 Coast Guard Recruiting Command shall submit to
16 the congressional defense committees a report on the
17 development of the program required under para-
18 graph (1) and a plan for execution.

19 (3) REPORT ON IMPLEMENTATION.—Not later
20 than 2 years after the date of the enactment of this
21 Act, the United States Army Cadet Command, the
22 Naval Education and Training Command, the Air
23 Education and Training Command, and the Coast
24 Guard Recruiting Command shall submit to the con-
25 gressional defense committees a report on the imple-

1 mentation of the program required under paragraph
2 (1).

3 (c) **MILITARY SERVICE ACADEMIES.**—

4 (1) **IN GENERAL.**—The Superintendents of the
5 military service academies shall carry out additional
6 military sexual assault prevent training and edu-
7 cation at the academies. A portion of this training
8 shall be in-person, facilitated training.

9 (2) **REPORT.**—The Secretary of Defense, in
10 consultation with the Superintendents of the military
11 service academies, shall submit a report to the con-
12 gressional defense committees describing the addi-
13 tional training and education implemented pursuant
14 to paragraph (1).

15 **SEC. 9. INCREASING THE PHYSICAL SECURITY OF MILI-**
16 **TARY INSTALLATIONS.**

17 (a) **SURVEY.**—Not later than 180 days after the date
18 of the enactment of this Act, the Secretary of Defense
19 shall conduct a survey of all lodging and living spaces on
20 military installations to identify, replace, or repair locking
21 mechanisms on points of entry, identify areas of installa-
22 tion of closed-circuit television (CCTV) security cameras,
23 and other passive security measures as necessary to in-
24 crease the prevention of crimes, including sexual assault,
25 on military installations.

1 (b) REPORT.—Not later than 180 days after the date
2 of the enactment of this Act, the Secretary of Defense
3 shall submit to the congressional defense committees a re-
4 port on the results of the survey conducted under sub-
5 section (a).

6 (c) PROGRAM.—Based on the results of the survey
7 conducted under subsection (a), the Secretary of Defense
8 shall carry out a program for increasing the security of
9 all lodging and living spaces on military installations, in-
10 cluding replacing or repairing locking mechanisms on
11 points of entry, installation of CCTV security cameras,
12 and other passive security measures as necessary to in-
13 crease the prevention of crimes, including sexual assault,
14 on military installations.

15 **SEC. 10. EFFECTIVE DATE AND APPLICABILITY.**

16 (a) EFFECTIVE DATE AND APPLICABILITY.—This
17 Act and the amendments made by this Act shall take ef-
18 fect 180 days after the date of the enactment of this Act,
19 and shall apply with respect to any allegation of charges
20 of an offense specified in subsection (b) of section 2, and
21 not excluded under subsection (c) of section 2, which of-
22 fense occurs on or after such effective date.

23 (b) REVISIONS OF POLICIES AND PROCEDURES.—
24 Any revision of policies and procedures required of the
25 military departments or the Department of Homeland Se-

1 curity as a result of this part and the amendments made
2 by this part shall be completed so as to come into effect
3 together with the coming into effect of this Act and the
4 amendments made by this Act in accordance with sub-
5 section (a).

