

116TH CONGRESS  
2D SESSION

# S. 4600

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

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2020

Ms. HIRONO (for herself and Mr. BOOKER) 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 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”.

1 **SEC. 2. MODIFICATION OF AUTHORITY TO DETERMINE TO**  
 2 **PROCEED TO TRIAL BY COURT-MARTIAL ON**  
 3 **CHARGES INVOLVING SEX-RELATED OF-**  
 4 **FENSES.**

5 (a) ROLE OF OFFICE OF THE CHIEF PROSECUTOR  
 6 IN DETERMINATION TO PROCEED TO TRIAL ON CHARGE  
 7 INVOLVING SEX-RELATED OFFENSE.—

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

12 (A) by redesignating subsection (d) as sub-  
 13 section (e); and

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

16 “(d) REFERRAL TO OFFICE OF THE CHIEF PROS-  
 17 ECUTOR.—(1) In the case of a charge relating to a sex-  
 18 related offense, in addition to referring the charge to the  
 19 staff judge advocate under subsection (a), the convening  
 20 authority shall refer, as soon as reasonably practicable, the  
 21 charge to the Office of the Chief Prosecutor of the armed  
 22 force of which the accused is a member to make the deter-  
 23 mination required by paragraph (3). The actions of the  
 24 Office of the Chief Prosecutor under this subsection  
 25 whether or not to try charges by court-martial shall be  
 26 free of unlawful or unauthorized influence or coercion.

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

3           “(A) An offense covered by section 920, 920a,  
4       920b, 920c, or 920d of this title (article 120, 120a,  
5       120b, 120c, or 120d).

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

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

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

15       “(3) The Office of the Chief Prosecutor shall make  
16 a determination regarding whether a charge relating to a  
17 sex-related offense should be referred to trial. If the Office  
18 of the Chief Prosecutor makes a determination to try the  
19 charge by court-martial, the Office of the Chief Prosecutor  
20 also shall determine whether to try the charge by a general  
21 court-martial convened under section 822 of this title (ar-  
22 ticle 22) or a special court-martial convened under section  
23 823 of this title (article 23).

24       “(4) A determination under paragraph (3) to try a  
25 charge relating to a sex-related offense by court-martial

1 shall include a determination to try all known offenses,  
2 including lesser included offenses.

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

8 “(6) A determination under paragraph (3) not to pro-  
9 ceed to trial on a charge relating to a sex-related offense  
10 by general or special court-martial shall not operate to ter-  
11 minate or otherwise alter the authority of commanding of-  
12 ficers to refer such charge for trial by summary court-  
13 martial convened under section 824 of this title (article  
14 24), or to impose non-judicial punishment in connection  
15 with the conduct covered by the charge as authorized by  
16 section 815 of this title (article 15).

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

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

1 (2) APPOINTMENT OF CHIEF PROSECUTOR.—

2 For any Armed Force (other than the Coast Guard)  
3 for which the position of Chief Prosecutor does not  
4 exist as of the date of the enactment of this Act, the  
5 Judge Advocate General of that Armed Force shall  
6 establish the position of Chief Prosecutor and ap-  
7 point as the Chief Prosecutor a commissioned officer  
8 in the grade of O-6 or above who has significant ex-  
9 perience prosecuting sexual assault trials by court-  
10 martial.

11 (b) CHIEF PROSECUTOR AUTHORITY TO CONVENE  
12 ARTICLE 32 PRELIMINARY HEARINGS.—Section 832(a) of  
13 title 10, United States Code (article 32(a) of the Uniform  
14 Code of Military Justice), is amended by adding at the  
15 end the following new paragraph:

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

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

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

4                   (A) by redesignating paragraphs (8) and  
5                   (9) as paragraphs (9) and (10), respectively;  
6                   and

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

9                   “(8) the officers in the offices established pur-  
10                  suant to section 2(c)(3) of the Justice for SPC  
11                  Vanessa Guillén Act, or officers in the grade of O-  
12                  6 or higher who are assigned such responsibility by  
13                  the Chief of Staff of the Army, the Chief of Naval  
14                  Operations, the Chief of Staff of the Air Force, or  
15                  the Commandant of the Marine Corps, but only with  
16                  respect to a sex-related offense (as defined in section  
17                  834(d)(2) of this title (article 34(d)(2)));”.

18           (2) NO EXERCISE BY OFFICERS IN CHAIN OF  
19           COMMAND OF ACCUSED OR VICTIM.—Section 822 of  
20           title 10, United States Code (article 22 of the Uni-  
21           form Code of Military Justice), is amended by add-  
22           ing at the end the following new subsection:

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

1           (3) OFFICES OF CHIEFS OF STAFF ON COURTS-  
2           MARTIAL.—

3           (A) OFFICES REQUIRED.—The Chief of  
4           Staff of the Army, the Chief of Naval Oper-  
5           ations, the Chief of Staff of the Air Force, or  
6           the Commandant of the Marine Corps shall es-  
7           tablish an office to do the following:

8                   (i) To convene general and special  
9                   courts-martial under sections 822 and 823  
10                  of title 10, United States Code (articles 22  
11                  and 23 of the Uniform Code of Military  
12                  Justice), pursuant to paragraph (8) of sec-  
13                  tion 822(a) of title 10, United States Code  
14                  (article 22(a) of the Uniform Code of Mili-  
15                  tary Justice), as amended by paragraph  
16                  (1), with respect to a sex-related offense  
17                  (as defined in section 834(d)(2) of title 10,  
18                  United States Code (article 34(d)(2) of the  
19                  Uniform Code of Military Justice)).

20                  (ii) To detail under section 825 of  
21                  title 10, United States Code (article 25 of  
22                  the Uniform Code of Military Justice),  
23                  members of courts-martial convened as de-  
24                  scribed in clause (i).

1           (B) PERSONNEL.—The personnel of each  
2 office established under subparagraph (A) shall  
3 consist of such members of the Armed Forces  
4 and civilian personnel of the Department of De-  
5 fense as may be detailed or assigned to the of-  
6 fice by the Chief of Staff or Commandant con-  
7 cerned. The members and personnel so detailed  
8 or assigned, as the case may be, shall be de-  
9 tailed or assigned from personnel billets in ex-  
10 istence on the date of the enactment of this  
11 Act.

12 (d) IMPLEMENTATION AND EFFECTIVE DATE.—

13           (1) FUNDING SOURCE.—The Secretaries of the  
14 military departments shall carry out subsections (a),  
15 (b), and (c) (and the amendments made by such  
16 subsections) using funds appropriated after the date  
17 of enactment of this Act and otherwise available to  
18 the Secretary of the military department concerned.

19           (2) POLICIES AND PROCEDURES.—

20           (A) IN GENERAL.—The Secretaries of the  
21 military departments shall revise policies and  
22 procedures as necessary to comply with this sec-  
23 tion.

24           (B) UNIFORMITY.—The General Counsel  
25 of the Department of Defense shall review the



1 policies and procedures revised under this para-  
2 graph in order to ensure that any lack of uni-  
3 formity in policies and procedures, as so re-  
4 vised, among the military departments does not  
5 render unconstitutional any policy or procedure,  
6 as so revised.

7 (3) **MANUAL FOR COURTS-MARTIAL.**—The Sec-  
8 retary of Defense shall recommend such changes to  
9 the Manual for Courts-Martial as are necessary to  
10 ensure compliance with this section.

11 (4) **EFFECTIVE DATE AND APPLICABILITY.**—  
12 This section and the amendments made by this sec-  
13 tion shall take effect on the date designated by the  
14 President, which shall not be later than the first day  
15 of the first calendar month that begins two years  
16 after the date of the enactment of this Act.

17 **SEC. 3. PUNITIVE ARTICLE ON SEXUAL HARASSMENT AND**  
18 **RELATED INVESTIGATION MATTERS.**

19 (a) **PUNITIVE ARTICLE ON SEXUAL HARASSMENT.**—

20 (1) **IN GENERAL.**—Subchapter X of chapter 47,  
21 United States Code (the Uniform Code of Military  
22 Justice), is amended by inserting after section 920c  
23 (article 120c) the following new section (article):

1 **“§ 920d. Art. 120d. Sexual harassment**

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

5 “(b) SEXUAL HARASSMENT DEFINED.—

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

9 “(A) a sexual advance;

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

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

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

14 “(A) submission to the conduct involved is  
15 made either explicitly or implicitly a term or  
16 condition of employment;

17 “(B) submission to or rejection of such  
18 conduct is used as the basis for an employment  
19 decision affecting an individual’s employment;  
20 or

21 “(C) such conduct unreasonably alters an  
22 individual’s terms, conditions, or privileges of  
23 employment, including by creating an intimi-  
24 dating hostile, or offensive work environment,  
25 as determined in accordance with paragraph  
26 (3).

1           “(3) In determining, for purposes of paragraph  
2           (2)(C), whether conduct constitutes sexual harass-  
3           ment because the conduct unreasonably alters an in-  
4           dividual’s terms, conditions, or privileges of employ-  
5           ment, including by creating an intimidating, hostile,  
6           or offensive work environment, the following rules  
7           shall apply:

8                   “(A) The determination shall be made on  
9                   the basis of the record as a whole, according to  
10                  the totality of the circumstances. A single inci-  
11                  dent may constitute sexual harassment.

12                  “(B) Incidents that may be sexual harass-  
13                  ment shall be considered in the aggregate,  
14                  with—

15                   “(i) conduct of varying types (such as  
16                   expressions of sex-based hostility, requests  
17                   for sexual favors, and denial of employ-  
18                   ment opportunities due to sexual orienta-  
19                   tion) viewed in totality, rather than in iso-  
20                   lation; and

21                   “(ii) conduct based on multiple pro-  
22                   tected characteristics (such as sex and  
23                   race) viewed in totality, rather than in iso-  
24                   lation.

1           “(C) The factors specified in this subpara-  
2 graph are among the factors to be considered in  
3 determining whether conduct constitutes sexual  
4 harassment and are not meant to be exhaustive.  
5 Not one of those factors shall be considered to  
6 be determinative in establishing whether con-  
7 duct constitutes sexual harassment. Such fac-  
8 tors are each of the following:

9                   “(i) The frequency of the conduct.

10                   “(ii) The duration of the conduct.

11                   “(iii) The location where the conduct  
12 occurred.

13                   “(iv) The number of individuals en-  
14 gaged in the conduct.

15                   “(v) The nature of the conduct, which  
16 may include physical, verbal, pictorial, or  
17 visual conduct, and conduct that occurs in  
18 person or is transmitted, such as electroni-  
19 cally.

20                   “(vi) Whether the conduct is threat-  
21 ening.

22                   “(vii) Any power differential between  
23 the alleged harasser and the person alleg-  
24 edly harassed.

1                   “(viii) Any use of epithets, slurs, or  
2                   other conduct that is humiliating or de-  
3                   grading.

4                   “(ix) Whether the conduct reflects  
5                   stereotypes about individuals in the pro-  
6                   tected class involved.”.

7                   (2) CLERICAL AMENDMENT.—The table of sec-  
8                   tions at the beginning of such subchapter is amend-  
9                   ed by inserting after the item relating to section  
10                  920e (article 120e) the following new item:

“920d. 120d. Sexual harassment.”.

11                  (b) INVESTIGATIONS OF SEXUAL HARASSMENT.—

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

14                  “§ 1561. **Complaints of sexual harassment: inde-**  
15                  **pendent investigation**

16                  “(a) ACTION ON COMPLAINTS ALLEGING SEXUAL  
17                  HARASSMENT.—A commanding officer or officer in charge  
18                  of a unit, vessel, facility, or area of an armed force under  
19                  the jurisdiction of the Secretary of a military department,  
20                  who receives, from a member of the command or a mem-  
21                  ber under the supervision of the officer, a formal com-  
22                  plaint alleging sexual harassment by a member of the  
23                  armed forces shall, as soon as practicable after such re-  
24                  ceipt, forward the complaint to an independent investi-  
25                  gator.

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

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

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

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

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

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

22               “(2) submit a report on the progress made in  
23 completing the investigation to the officer described  
24 in subsection (a) not later than 20 days after the  
25 date on which the investigation commenced and

1 every 14 days thereafter until the investigation is  
2 completed and, upon completion of the investigation,  
3 then submit a final report on the results of the in-  
4 vestigation, including any action taken as a result of  
5 the investigation, to that officer.

6 “(e) DEFINITIONS.—In this section:

7 “(1) The term ‘formal complaint’ means a com-  
8 plaint that an individual files in writing and attests  
9 to the accuracy of the information contained in the  
10 complaint.

11 “(2) The term ‘independent investigator’ means  
12 a member of the armed forces or employee of the  
13 Department of Defense—

14 “(A) who is outside the chain of command  
15 of the complainant; and

16 “(B) whom the Secretary concerned deter-  
17 mines is trained in the investigation of sexual  
18 harassment.

19 “(3) The term ‘sexual harassment’ has the  
20 meaning given that term in section 920d(b) of this  
21 title (article 120d of the Uniform Code of Military  
22 Justice).”.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions at the beginning of chapter 80 of such title is

1 amended by striking the item relating to section  
2 1561 and inserting the following new item:

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

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

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

8 (B) apply to any investigation of a formal  
9 complaint of sexual harassment (as those terms  
10 are defined in such section, as amended) made  
11 on or after that date.

12 (4) REPORT ON IMPLEMENTATION.—Not later  
13 than nine months after the date of the enactment of  
14 this Act, each Secretary of a military department  
15 shall submit to Congress a report on preparation of  
16 that Secretary to implement the amendment to sec-  
17 tion 1561 of such title made by this subsection.

18 **SEC. 4. CONFIDENTIAL REPORTING OF SEXUAL HARASS-**  
19 **MENT.**

20 (a) ESTABLISHMENT.—Chapter 80 of title 10,  
21 United States Code, is amended by inserting after section  
22 1561a the following new section:

23 **“§ 1561b. Confidential reporting of sexual harassment**

24 “(a) ESTABLISHMENT.—Notwithstanding section  
25 1561 of this title, the Secretary of Defense shall prescribe



1 regulations establishing a process by which a member of  
2 an armed force under the jurisdiction of the Secretary of  
3 a military department may confidentially allege a com-  
4 plaint of sexual harassment to an individual outside the  
5 immediate chain of command of that member.

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

8 “(1) shall maintain the confidentiality of the  
9 member alleging the complaint;

10 “(2) shall provide to the member alleging the  
11 complaint the option—

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

14 “(B) to include reports related to such  
15 complaint in the Catch a Serial Offender Pro-  
16 gram; and

17 “(3) shall provide to the commander of the  
18 complainant a report—

19 “(A) regarding the complaint; and

20 “(B) that does not contain any personally  
21 identifiable information regarding the complain-  
22 ant.

23 “(c) EDUCATION AND TRACKING.—The Secretary of  
24 Defense shall—

1           “(1) educate members under the jurisdiction of  
2           the Secretary of a military department regarding the  
3           process established under this section; and

4           “(2) track complaints alleged pursuant to the  
5           process.

6           “(d) ANNUAL REPORTS.—The Secretary of Defense  
7           shall submit to the Committees on Armed Services of the  
8           Senate and the House of Representatives on an annual  
9           basis a report containing data (that does not contain any  
10          personally identifiable information) relating to complaints  
11          alleged pursuant to the process established under this sec-  
12          tion during the preceding year.”.

13          (b) CLERICAL AMENDMENT.—The table of sections  
14          at the beginning of chapter of 80 such title is amended  
15          by inserting after the item relating to section 1561a the  
16          following new item:

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

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

1 **SEC. 5. AUTHORIZATION OF CLAIMS BY MEMBERS OF THE**  
2 **ARMED FORCES AND EMPLOYEES OF THE DE-**  
3 **PARTMENT OF DEFENSE AGAINST THE**  
4 **UNITED STATES THAT ARISE FROM SEXUAL**  
5 **MISCONDUCT.**

6 (a) CLAIMS ARISING FROM SEXUAL HARASSMENT.—

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

10 **“§ 2733b. Claims arising from sex-related offenses**

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

16 “(1) a sex-related offense;

17 “(2) the negligent failure to prevent a sex-re-  
18 lated offense; or

19 “(3) the negligent failure to investigate a sex-  
20 related offense.

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

23 “(1) the claim is filed by the claimant who is  
24 the victim of the sex-related offense, or by an au-  
25 thorized representative on behalf of such claimant

1 who is deceased or otherwise unable to file the claim  
2 due to incapacitation;

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

5 “(3) the claim is not allowed to be settled and  
6 paid under any other provision of law; and

7 “(4) the claim is substantiated as prescribed in  
8 regulations prescribed by the Secretary of Defense  
9 under subsection (d).

10 “(c) PAYMENT OF CLAIMS.—(1) If the Secretary of  
11 Defense determines, pursuant to regulations prescribed by  
12 the Secretary under subsection (d), that a claim under this  
13 section in excess of \$100,000 is meritorious, and the claim  
14 is otherwise payable under this section, the Secretary may  
15 pay the claimant \$100,000 and report any meritorious  
16 amount in excess of \$100,000 to the Secretary of the  
17 Treasury for payment under section 1304 of title 31.

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

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

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

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

4                   “(i) the filing, receipt, investigation, and  
5 evaluation of a claim;

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

8                   “(iii) such other matters relating to the  
9 processing and administration of a claim, in-  
10 cluding an administrative appeals process, as  
11 the Secretary considers appropriate.

12           “(B) Uniform standards consistent with gen-  
13 erally accepted standards used in a majority of  
14 States in adjudicating claims under chapter 171 of  
15 title 28 (commonly known as the ‘Federal Tort  
16 Claims Act’) to be applied to the evaluation, settle-  
17 ment, and payment of claims under this section  
18 without regard to the place of occurrence of the sex-  
19 related offense giving rise to the claim or the mili-  
20 tary department of the covered individual, and with-  
21 out regard to foreign law in the case of claims aris-  
22 ing in foreign countries, including uniform standards  
23 to be applied to determinations with respect to—

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

4           “(ii) whether the personal injury or death  
5           of the claimant was caused by a negligent or  
6           wrongful act or omission of a covered indi-  
7           vidual;

8           “(iii) requirements relating to proof of  
9           duty, breach of duty, and causation resulting in  
10          compensable injury or loss, subject to such ex-  
11          clusions as may be established by the Secretary;  
12          and

13          “(iv) calculation of damages.

14          “(C) Such other matters as the Secretary con-  
15          siders appropriate.

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

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

20                  “(B) not later than one year after prescribing  
21          such interim final rule and considering public com-  
22          ments with respect to such interim final rule, by pre-  
23          scribing a final rule.

24          “(e) LIMITATION ON ATTORNEY FEES.—(1) No at-  
25          torney shall charge, demand, receive, or collect for services

1 rendered, fees in excess of 20 percent of any claim paid  
2 pursuant to this section.

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

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

13 “(1) indicating the number of claims processed  
14 under this section;

15 “(2) indicating the resolution of each such  
16 claim; and

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

20 “(g) DEFINITIONS.—In this section:

21 “(1) The term ‘covered individual’ means a  
22 member of the armed forces or an employee of the  
23 Department of Defense.

24 “(2) The term ‘sex-related offense’ has the  
25 meaning given that term in section 834(d)(2) of this

1 title (article 34(d)(2) of the Uniform Code of Mili-  
2 tary Justice).”.

3 (2) CLERICAL AMENDMENT.—The table of sec-  
4 tions at the beginning of chapter 163 of such title  
5 is amended by inserting after the item relating to  
6 section 2733a the following new item:

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

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

14 (c) CONFORMING AMENDMENTS.—

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

17 (2) Section 1304(a)(3)(D) of title 31, United  
18 States Code, is amended by inserting “2733b,” after  
19 “2733a,”.

20 (d) EFFECTIVE DATE AND TRANSITION PROVI-  
21 SION.—

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



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

6 **SEC. 6. REPORTS ON SEXUAL HARASSMENT/ASSAULT RE-**  
7 **SPONSE PROGRAMS OF THE MILITARY DE-**  
8 **PARTMENTS.**

9 (a) SECRETARY OF DEFENSE REPORT.—

10           (1) IN GENERAL.—Not later than 180 days  
11 after the date of the enactment of this Act, the Sec-  
12 retary of Defense shall submit to Congress a report  
13 on the Sexual Harassment/Assault Response Pro-  
14 grams (SHARP) of the military departments.

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

17           (A) A description and assessment of the  
18 Sexual Harassment/Assault Response Program  
19 of each military department, including the  
20 funding for such program, the manner in which  
21 such funding is allocated, and the elements of  
22 such program that receive funding.

23           (B) A comparative assessment of the feasi-  
24 bility and advisability of carrying out the Sex-

1           ual Harassment/Assault Response Programs  
2           through each structure as follows:

3                   (i) The current structure.

4                   (ii) A structure involving discharge  
5                   through civilian personnel.

6                   (iii) A structure involving discharge  
7                   through substantial numbers of contractors.

8                   (iv) A structure involving the estab-  
9                   lishment of a military occupational spe-  
10                  cialty to permit members of the Armed  
11                  Forces to extend their time in a Sexual  
12                  Harassment/Assault Response Program  
13                  and professionalize their services (including  
14                  proper education and training as well as  
15                  continuing education).

16                  (v) Any other structure the Secretary  
17                  considers appropriate.

18           (b) COMPTROLLER GENERAL OF THE UNITED  
19 STATES REPORT.—

20                   (1) IN GENERAL.—Not later than one year  
21                   after the date of the enactment of this Act, the  
22                   Comptroller General of the United States shall sub-  
23                   mit to Congress a report on the Sexual Harassment/  
24                   Assault Response Programs of the military depart-  
25                   ments.

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

3           (A) An assessment by the Comptroller  
4 General of the efficacy and impacts of the Sex-  
5 ual Harassment/Assault Response Programs of  
6 the Armed Forces.

7           (B) Such recommendations as the Comp-  
8 troller General considers appropriate for im-  
9 provements to the Sexual Harassment/Assault  
10 Response Programs.

11 **SEC. 7. GAO STUDY OF MEMBERS ABSENT WITHOUT LEAVE**  
12 **OR ON UNAUTHORIZED ABSENCE.**

13       (a) STUDY; REPORT.—Not later than September 30,  
14 2021, the Comptroller General of the United States shall  
15 submit to the Committees on Armed Services of the Sen-  
16 ate and the House of Representatives a report containing  
17 the results of a study regarding how the Armed Forces  
18 handle cases of members of the Armed Forces absent  
19 without leave or on unauthorized absence.

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

22           (1) The procedures and guidelines established  
23 by each Armed Force for the investigation of such  
24 a case.

25           (2) The guidelines for distinguishing between—

- 1 (A) common cases;
- 2 (B) cases that may involve foul play or ac-
- 3 cident; and
- 4 (C) cases wherein the member may be in
- 5 danger.
- 6 (3) The current guidelines for cooperation and
- 7 coordination between military investigative organiza-
- 8 tions and—
  - 9 (A) local law enforcement agencies; and
  - 10 (B) Federal law enforcement agencies.
- 11 (4) The current guidelines for use of traditional
- 12 and social media in conjunction with such cases.
- 13 (5) Military resources available for such cases
- 14 and any apparent shortfalls in such resources.
- 15 (6) How the procedures for such cases vary be-
- 16 tween Armed Forces.
- 17 (7) How the procedures described in paragraph
- 18 (6) vary from procedures used by local and Federal
- 19 law enforcement.
- 20 (8) Best practices for responding to and inves-
- 21 tigating such cases.
- 22 (9) Any other matter the Comptroller General
- 23 determines appropriate.

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