

A BILL

To improve Department of Defense programs relating to prevention of, and response to, sexual assault involving members of the Armed Forces, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the “Leadership, Education, Accountability
5 and Discipline on Sexual Assault Prevention Act of 2012”.

6 (b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Special victim capability in the military departments.

Sec. 3. Collection and retention of records on disposition of reports of sexual assault.

Sec. 4. Enhancement to training and education for sexual assault prevention and response.

Sec. 5. Limitation on release from active duty or recall to active duty of reserve component members who are victims of sexual assault while on active duty.

Sec. 6. Requirement for commanders to conduct annual organizational climate assessments.

Sec. 7. Enhancement to requirements for availability of information on sexual assault prevention and response resources.

7 **SEC. 2. SPECIAL VICTIM CAPABILITY IN THE MILITARY DEPARTMENTS.**

8 (a) REQUIREMENT.—The Secretary of Defense shall require that there be established
9 within each military department a special victim capability for the investigation and prosecution
10 of special victim offenses. The special victim capability established within a military department
11 shall be comprised, at a minimum, of the following:

12 (1) Specially trained and selected investigators from within the military
13 department’s criminal investigative organization.

14 (2) Specially trained and selected judge advocates to serve as prosecutors.

1 (3) Victim-witness assistance personnel.

2 (4) Administrative or paralegal support personnel.

3 (b) DEFINITIONS.—In this section:

4 (1) The term “criminal investigative organization” means any of the following:

5 (A) The Army Criminal Investigation Command.

6 (B) The Naval Criminal Investigative Service.

7 (C) The Air Force Office of Special Investigations.

8 (D) Any other Department of Defense criminal investigative organization
9 designated by the Secretary of Defense for the purposes of this section.

10 (2) The term “special victim offenses” means offenses involving allegations of
11 any of the following:

12 (A) Child abuse.

13 (B) Rape, sexual assault, or forcible sodomy.

14 (C) Domestic violence involving aggravated assault.

15 (c) TRAINING.—The Secretary of Defense shall establish standards for the selection,
16 training, and certification of personnel assigned to provide a special victim capability pursuant to
17 subsection (a).

18 (d) DEFENSE CAPABILITY.—The Secretary shall also require that military defense counsel
19 are trained, under the supervision of the Judge Advocate General of the Army, Navy, or Air
20 Force, as appropriate, in the defense of special victim offenses.

21 **SEC. 3. COLLECTION AND RETENTION OF RECORDS ON DISPOSITION OF**
22 **REPORTS OF SEXUAL ASSAULT.**

1 (a) COLLECTION.—The Secretary of Defense shall require that the Secretary of each
2 military department establish a record on the disposition of any report of sexual assault, whether
3 such disposition is court martial, nonjudicial punishment, or other administrative action. The
4 record of any such disposition shall include the following, as appropriate:

5 (1) Documentary information collected about the incident reported, other than
6 investigator case notes.

7 (2) Punishment imposed, including the sentencing by judicial or non-judicial
8 means including incarceration, fines, restriction, and extra duty as a result of military
9 court-martial, federal and local court and other sentencing, or any other punishment
10 imposed.

11 (3) Administrative actions taken, if any.

12 (4) Any pertinent referrals offered as a result of the incident (such as drug and
13 alcohol counseling and other types of counseling or intervention).

14 (b) RETENTION.—The Secretary of Defense shall require that—

15 (1) the records established pursuant to subsection (a) be retained by the
16 Department of Defense for a period of not less than 20 years; and

17 (2) a copy of such records be maintained at a centralized location for the same
18 period as applies to retention of the records under paragraph (1).

19 **SEC. 4. ENHANCEMENT TO TRAINING AND EDUCATION FOR SEXUAL**
20 **ASSAULT PREVENTION AND RESPONSE.**

21 Section 585 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law
22 112-81; 125 Stat. 1434) is amended by adding at the end the following new subsections:

1 “(d) COMMANDERS’ TRAINING.—The Secretary of Defense shall provide for the inclusion
2 of a sexual assault prevention and response training module in the training for new or
3 prospective commanders at all levels of command. The training shall be tailored to the
4 responsibilities and leadership requirements of members of the Armed Forces as they are
5 assigned to command positions. Such training shall include the following:

6 “(1) Fostering a command climate that does not tolerate sexual assault.

7 “(2) Fostering a command climate in which persons assigned to the command are
8 encouraged to intervene to prevent potential incidents of sexual assault.

9 “(3) Fostering a command climate that encourages victims of sexual assault to
10 report any incident of sexual assault.

11 “(4) Understanding the needs of, and the resources available to, the victim after an
12 incident of sexual assault.

13 “(5) Use of military criminal investigative organizations for the investigation of
14 alleged incidents of sexual assault.

15 “(6) Available disciplinary options, including court-martial, non-judicial
16 punishment, administrative action, and deferral of discipline for collateral misconduct, as
17 appropriate.

18 “(e) EXPLANATION TO BE INCLUDED IN INITIAL ENTRY AND ACCESSION TRAINING.—

19 “(1) REQUIREMENT.—The Secretary of Defense shall require that the matters
20 specified in paragraph (2) be carefully explained to each member of the Army, Navy, Air
21 Force, and Marine Corps at the time of (or within fourteen duty days after)—

22 “(A) the member's initial entrance on active duty; or

1 “(B) the member's initial entrance into a duty status with a reserve
2 component.

3 “(2) MATTERS TO BE EXPLAINED.—This subsection applies with respect to the
4 following:

5 “(A) Department of Defense policy with respect to sexual assault.

6 “(B) The resources available with respect to sexual assault reporting and
7 prevention and the procedures to be followed by a member seeking to access
8 those resources.”.

9 **SEC. 5. LIMITATION ON RELEASE FROM ACTIVE DUTY OR RECALL TO ACTIVE**
10 **DUTY OF RESERVE COMPONENT MEMBERS WHO ARE VICTIMS**
11 **OF SEXUAL ASSAULT WHILE ON ACTIVE DUTY.**

12 (a) IN GENERAL.—Chapter 1209 of title 10, United States Code, is amended by adding at
13 the end the following new section:

14 **“§ 12323. Active duty for response to sexual assault**

15 “(a) CONTINUATION ON ACTIVE DUTY.—In the case of a member of a reserve component
16 who is the alleged victim of sexual assault committed while on active duty and who is expected
17 to be released from active duty before the determination of whether the member was assaulted
18 while in the line of duty, the Secretary concerned may, upon the request of the member, order the
19 member to be retained on active duty until the line of duty determination, but not to exceed 180
20 days beyond the original expiration of active duty date . A member eligible for continuation on
21 active duty under this subsection shall be informed as soon as practicable after the alleged assault
22 of the option to request continuation on active duty under this subsection.

1 “(b) RETURN TO ACTIVE DUTY.—In the case of a member of a reserve component not on
2 active duty who is the alleged victim of a sexual assault that occurred while the member was on
3 active duty and when the determination whether the member was in the line of duty is not
4 completed, the Secretary concerned may, upon the request of the member, order the member to
5 active duty for such time as necessary to complete the line of duty determination, but not to
6 exceed 180 days.

7 “(c) REGULATIONS.—The Secretaries of the military departments shall prescribe
8 regulations to carry out this section, subject to guidelines prescribed by the Secretary of Defense.
9 The guidelines of the Secretary of Defense shall provide that—

10 “(1) a request submitted by a member described in subsection (a) or (b) to
11 continue on active duty, or to be ordered to active duty, respectively, must be decided
12 within 30 days from the date of the request; and

13 “(2) if the request is denied, the member may appeal to the first general officer or
14 flag officer in the chain of command of the member, and in the case of such an appeal a
15 decision on the appeal must be made within 15 days from the date of the appeal.”.

16 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
17 amended adding at the end the following new item:

“12323. Active duty for response to sexual assault.”.

18 **SEC. 6. REQUIREMENT FOR COMMANDERS TO CONDUCT ANNUAL**

19 **ORGANIZATIONAL CLIMATE ASSESSMENTS.**

20 (a) REQUIREMENT.—The Secretary of Defense shall require the commander of each
21 covered unit to conduct an organizational climate assessment within 120 days after the
22 commander assumes command and annually thereafter.

1 (b) DEFINITIONS.—In this section:

2 (1) COVERED UNIT.—The term “covered unit” means any organizational element
3 of the Armed Forces (other than the Coast Guard) with more than 50 members assigned,
4 including any such element of a reserve component.

5 (2) ORGANIZATIONAL CLIMATE ASSESSMENT.—The term “organizational climate
6 assessment” means an assessment intended to obtain information about the positive and
7 negative factors that may have an impact on unit effectiveness and readiness by
8 measuring matters relating to human relations climate such as prevention and response to
9 sexual assault and equal opportunity.

10 **SEC. 7. ENHANCEMENT TO REQUIREMENTS FOR AVAILABILITY OF**
11 **INFORMATION ON SEXUAL ASSAULT PREVENTION AND**
12 **RESPONSE RESOURCES.**

13 (a) REQUIRED POSTING OF INFORMATION ON SEXUAL ASSAULT PREVENTION AND
14 RESPONSE RESOURCES.—

15 (1) POSTING.—The Secretary of Defense shall require that there be prominently
16 posted, in accordance with paragraph (2), notice of the following information relating to
17 sexual assault prevention and response, in a form designed to ensure visibility and
18 understanding:

19 (A) Resource information for members of the Armed Forces, military
20 dependents, and civilian personnel of the Department of Defense with respect to
21 prevention of sexual assault and reporting of incidents of sexual assault.

22 (B) Contact information for personnel who are designated as Sexual
23 Assault Response Coordinators and Sexual Assault Victim Advocates.

1 (C) The Department of Defense “hotline” telephone number, referred to as
2 the Safe Helpline, for reporting incidents of sexual assault, or any successor
3 operation.

4 (2) POSTING PLACEMENT.—Posting under subsection (a) shall be at the following
5 locations, to the extent practicable:

6 (A) Any Department of Defense duty facility.

7 (B) Any Department of Defense dining facility.

8 (C) Any Department of Defense multi-unit residential facility.

9 (D) Any Department of Defense health care facility.

10 (E) Any Department of Defense commissary or exchange.

11 (F) Any Department of Defense Community Service Agency.

12 (b) NOTICE TO VICTIMS OF AVAILABLE ASSISTANCE.—The Secretary of Defense shall
13 require that procedures in the Department of Defense for responding to a complaint or allegation
14 of sexual assault submitted by or against a member of the Armed Forces include prompt notice to
15 the person making the complaint or allegation of the forms of assistance available to that person
16 from the Department of Defense and, to the extent known to the Secretary, through other
17 departments and agencies, including State and local agencies, and other sources.

18

Section-by-Section Analysis

The men and women of the U.S. Armed Forces deserve an environment that is free from the threat of sexual assault. This proposed bill is part of the initiatives by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to pursue actively policy and training changes to help address this challenging issue.

SEC. 2. SPECIAL VICTIM CAPABILITY IN THE MILITARY DEPARTMENTS:

The purpose of this provision is to establish a permanent and professional cadre of investigators, prosecutors, victim witness assistance personnel, and paralegals in each military department who are specifically and continually trained in the special and sensitive nature of sexual offenses and similar matters, as well as training for military defense counsel.

The requirement to establish a special victim capability shall be implemented to meet the unique needs and structure of each Service. The special victim capability may be geographically dispersed in permanent locations or located at the military department level as a mobile, quick-reaction team. The Services will have discretion to prioritize special victim offense cases that are eligible for the resources of the special victim capability. The policies for implementation of this provision will be the responsibility of the individual Service Secretaries, unless otherwise directed by the Secretary of Defense.

This provision will ensure the thorough and professional investigation, disposition and prosecution of allegations of sexual offenses, child abuse, and domestic violence. The special victim capability will assist in training other investigators, prosecutors, paralegals, and victim witness assistance personnel throughout the Department of Defense.

This provision also requires the Secretary of Defense to ensure that military defense counsel are trained to defend individuals accused of committing special victim offenses. Such training would take place under the supervision of the Service's Judge Advocate Generals, and is a recognition that while military defense counsel lack investigative resources or victim-witness responsibilities, their effective representation of their clients is essential to our system of military justice.

This provision is not intended to affect the statutory authority and responsibilities of the Inspector General of the Department of Defense to develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs.

Budget Implications: Section 2 has no budget implications.

SEC. 3. COLLECTION AND RETENTION OF RECORDS ON DISPOSITION OF REPORTS OF SEXUAL ASSAULT:

This provision would require reporting of the outcome of disciplinary and administrative proceedings arising from reports of sexual assault, providing better access to information about the Department's response to sexual assault. The provision would also require those records to be centrally retained for a period of 20 years. In implementing this provision the Secretary of Defense shall require the Secretary of each military department to consider applicable statutes and Department regulations, to include the Privacy Act of 1974, 5 U.S.C. section 552a, as amended, and DoD 5400.11-R, DoD Privacy Program.

This provision is not intended to affect the statutory authority and responsibilities of the Inspector General of the Department of Defense to develop policy, monitor and evaluate

program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs.

Budget Implications: Section 3 has no budget implications.

SEC. 4. ENHANCEMENT TO TRAINING AND EDUCATION FOR SEXUAL ASSAULT PREVENTION AND RESPONSE.

Section 585 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81; 125 Stat. 1434; 10 U.S.C. 1561 note) established new training requirements on sexual assault prevention for both first responders and professional military education. Section 3 would add additional training requirements to that section.

The proposed new subsection (d) would require inclusion of a sexual assault prevention and response training module in the training for new or prospective commanders at all levels of command.

The proposed new subsection (e) would require that the Department of Defense policy with respect to sexual assault and resources on sexual assault reporting and prevention be explained to all members of the military within 14 days from the member's initial entrance on active duty or entrance into a duty status with a reserve component. This provision is modeled after the provisions of section 937 of title 10, U.S. Code (Art. 137 of the UCMJ), which requires a similar briefing on the Uniform Code of Military Justice.

Budget Implications: Training under section 4 will be funded out of existing funds. The proposal therefore has no budget implications.

SEC. 5. LIMITATION ON RELEASE FROM ACTIVE DUTY OR RECALL TO ACTIVE DUTY OF RESERVE COMPONENT MEMBERS WHO ARE VICTIMS OF SEXUAL ASSAULT WHILE ON ACTIVE DUTY:

Section 5 would authorize the Secretaries of the military departments to allow members of the reserve components who allegedly have been sexually assaulted while on active duty to remain on active duty for a period sufficient for completion of the line-of-duty determination, but not more than 180 days. By enacting this proposal, reserve component victims of sexual assault who file Unrestricted Reports may retain their active duty status in order to ensure their receipt of essential Department funded (or reimbursable) victim services.

Previous National Defense Authorization Acts have not addressed issues related to reserve component members who have been victims of sexual assault during active duty. Further, there has been an inability to track reserve component members as they move from Title 10 status to Title 32 and/or drilling Reservist status. To date, the number of reserve component members who have been sexually assaulted while on active duty orders has been provided by the Service's Sexual Assault Offices. These numbers are presented below. Also, there are reports from the reserve component that victims have experienced further difficulty due to being released from active duty prior to establishment of appropriate Line of Duty Determination.

The National Guard Bureau (NGB) and Department of Defense Reserve Affairs (DoD-RA), recognizes the need to reliably count the number of reserve component members who were assaulted while in a active duty status and to determine if they received appropriate follow-up care. For the present proposal, estimating the number of reserve component members who were assaulted while in an active duty status required a review of specific DoD reports and surveys as follows:

- Defense Manpower Data Center (DMDC) 2004 Sexual Harassment Survey of Reserve Component Service Members
- DMDC 2008 Gender Relations Survey of the of Reserve Component Members
- Fiscal Year (FY) 2009 Department of Defense Annual Report on Sexual Assault in the Military
- FY 2010 Department of Defense Annual Report on Sexual Assault in the Military
- FY 2011 Department of Defense Annual Report on Sexual Assault in the Military (DRAFT format and not for release.)

The 2008 DMDC Gender Relations Survey of the Reserve Components, like a similar Survey of the Active Component, provides an estimate of the number of sexual assaults within the "one situation" scenario – specifically, one situation that has occurred in the 12 months preceding the survey. Using a stratified random sample (individuals surveyed were representative of the Services and ranks within the Services), 3.5 percent of the women and .9 percent of the men indicated they had experienced an incident of unwanted sexual contact (the survey term for the crimes that constitute sexual assault under the Uniform Code of Military Justice) in the year prior to the survey. Base on these prevalence rates, the Sexual Assault Prevent and Response office estimates that 8,082 Reserve Component Service members (3,373 females and 4,709 males) experienced some form of sexual assault in 2008. Of the 3.5 percent of women who experienced unwanted sexual contact, 33 percent indicated it occurred while activated and 24 percent indicated it occurred while deployed.

While the exact number of Reserve Component Service members potentially affected by this proposed legislation remains uncertain, information from the last three DoD Annual Reports to Congress (FY 2009, FY 2010 and FY 2011) indicate a yearly average of 172 sexual assault cases were opened or closed within the fiscal year with Reserve Component Service members as victims of sexual assault while serving in a Title 10 Active Duty status. This averaged number includes Restricted and Unrestrictive reports.

SEC. 6. REQUIREMENT FOR COMMANDERS TO CONDUCT ANNUAL ORGANIZATIONAL CLIMATE ASSESSMENTS.

Section 6 establishes a uniform requirement across the Services for the conduct of unit climate assessments upon a commander's assumption of command and annually thereafter. In implementing this requirement, the Secretary of Defense intends to impose standardized organizational climate elements.

Budget Implications: Section 6 has no budget implications.

SEC. 7. ENHANCEMENT TO REQUIREMENTS FOR AVAILABILITY OF INFORMATION ON SEXUAL ASSAULT PREVENTION AND RESPONSE RESOURCES.

Despite the extensive overlaying of requirements on commanders to post public safety regulations and employee rights, there are no current requirements to post resources information for victims of sexual assault. This proposal would establish a statutory requirement that all Department of Defense workplaces, dining facilities, healthcare and mental healthcare facilities, and residential facilities have prominently placed documents on the rights of service members, military dependents, and civilian personnel in instances of sexual assault. These documents would clearly display the contact information for the Safe Helpline, which provides users with anonymous access to trained staff to whom they can gain access to victim resources on a 24/7 basis.

By making this a requirement in law, the Department will improve upon its ability to communicate resources for survivors who are not comfortable reporting or discussing the sexual assault incident within the regular chain of command.

The provision also requires that any response to a complaint or an allegation of sexual assault include prompt notice of the resources and forms of assistance available to that person.

Budget Implications: Section 7 has no budget implications.