



Military Justice Branch

# SMART BOOK

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## **National Defense Authorization Act for Fiscal Year 2016**

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## SEC. 531. ENFORCEMENT OF CERTAIN CRIME VICTIM RIGHTS BY THE COURT OF CRIMINAL APPEALS

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**Implementation:** Immediate.

**Summary:** Enforcement of victims' right through writ of mandamus.

**Statute affected:** 10 USC 806b, subsection (e).

**Text of Statute:** Subsection (e) of section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), is amended to read as follows:

“(e) ENFORCEMENT BY COURT OF CRIMINAL APPEALS.— (1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

“(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

“(3) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court.

“(4) Paragraph (1) applies with respect to the protections afforded by the following:

“(A) This section (article).

“(B) Section 832 (article 32) of this title.

“(C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

“(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

“(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

“(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.”.

### **Amended Text of Affected Statute:**

10 USC 806b. Art. 6b. Rights of the victim of an offense under this chapter [10 USCS §§ 801 et seq.]

(a) Rights of a victim of an offense under this chapter. A victim of an offense under this chapter has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any of the following:

(A) A public hearing concerning the continuation of confinement prior to trial of the accused.

(B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.

(C) A court-martial relating to the offense.

- (D) A public proceeding of the service clemency and parole board relating to the offense.
  - (E) The release or escape of the accused, unless such notice may endanger the safety of any person.
- (3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or investigating officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (4) The right to be reasonably heard at any of the following:
- (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
  - (B) A sentencing hearing relating to the offense.
  - (C) A public proceeding of the service clemency and parole board relating to the offense.
- (5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).
- (6) The right to receive restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.
- (b) Victim of an offense under this chapter defined. In this section, the term “victim of an offense under this chapter” means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter (the Uniform Code of Military Justice).
- (c) Appointment of individuals to assume rights for certain victims. In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the military judge shall designate a representative of the estate of the victim, a family member, or another suitable individual to assume the victim’s rights under this section. However, in no event may the individual so designated be the accused.
- (d) Rule of construction. Nothing in this section (article) shall be construed—
- (1) to authorize a cause of action for damages; or
  - (2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages.
- (e) **Enforcement by Court of Criminal Appeals.**
- (1) ~~If the victim of an offense under this chapter [10 USCS §§ 801 et seq.] believes that a court-martial ruling violates the victim’s rights afforded by a Military Rule of Evidence specified in paragraph (2), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the court-martial to comply with the Military Rule of Evidence.~~**
  - (2) ~~Paragraph (1) applies with respect to the protections afforded by the following:~~**
    - (A) ~~Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.~~**

**~~(B) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.~~**

- (1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.
- (2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.
- (3) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court.
- (4) Paragraph (1) applies with respect to the protections afforded by the following:
  - (A) This section (article).
  - (B) Section 832 (article 32) of this title.
  - (C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.
  - (D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.
  - (E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.
  - (F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

## SEC. 532. DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEE ACCESS TO SPECIAL VICTIMS' COUNSEL

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**Implementation:** Immediate.

**Summary:** DoD Civilian Employee Access to VLC.

**Statute affected:** 10 USC 1044e, subsection (a).

**Text of Statute:** Section 1044e(a)(2) of title 10, United States Code, is amended by adding the following new subparagraph:

“(C) a civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims’ Counsel services to the employee.”.

### **Amended Text of Affected Statute:**

10 USC 1044e. Special Victims' Counsel for victims of sex-related offenses (subsection (a) only)

(a) Designation; purposes.

(1) The Secretary concerned shall designate legal counsel (to be known as “Special Victims’ Counsel”) for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title [10 USCS § 1044].

(B) An individual who is—

(i) not covered under subparagraph (A);

(ii) a member of a reserve component of the armed forces; and

(iii) a victim of an alleged sex-related offense as described in paragraph

(1)—

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.

**(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims’ Counsel services to the employee.**

**SEC. 533. AUTHORITY OF SPECIAL VICTIMS' COUNSEL TO PROVIDE LEGAL CONSULTATION AND ASSISTANCE IN CONNECTION WITH VARIOUS GOVERNMENT PROCEEDINGS**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** VLC provision of legal consultation and assistance with complaints against the government, requests for Government information, and communications with Congress.

**Statute affected:** 10 USC 1044e, subsection (b).

**Text of Statute:** Section 1044e(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (9) as paragraph (10); and

(2) by inserting after paragraph (8) the following new paragraph(9):

“(9) Legal consultation and assistance in connection with—

    “(A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;

    “(B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a ‘Freedom of Information Act request’); and

    “(C) any correspondence or other communications with Congress.”.

**Amended Text of Affected Statute:**

10 USC 1044e. Special Victims' Counsel for victims of sex-related offenses (subsection (b) only)

(b) Types of legal assistance authorized. The types of legal assistance authorized by subsection (a) include the following:

(1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(2) Legal consultation regarding the Victim Witness Assistance Program, including—

(A) the rights and benefits afforded the victim;

(B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and

(C) the nature of communication made to the liaison in comparison to communication made to a Special Victims' Counsel or a legal assistance attorney under section 1044 of this title [10 USCS § 1044].

(3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).

(5) Legal consultation regarding the military justice system, including (but not limited to)—

- (A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;
  - (B) any proceedings of the military justice process in which the victim may observe;
  - (C) the Government's authority to compel cooperation and testimony; and
  - (D) the victim's responsibility to testify, and other duties to the court.
- (6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.
- (7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;
- (8) Legal consultation and assistance—
- (A) in personal civil legal matters in accordance with section 1044 of this title [10 USCS § 1044];
  - (B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;
  - (C) in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and
  - (D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title [10 USCS § 1059] and other State and Federal victims' compensation programs.
- (9) Legal consultation and assistance in connection with—
- (A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;
  - (B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a 'Freedom of Information Act request'); and
  - (C) any correspondence or other communications with Congress.
- (9) (10) Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection (h).

## SEC. 534. TIMELY NOTIFICATION TO VICTIMS OF SEX-RELATED OFFENSES OF THE AVAILABILITY OF ASSISTANCE FROM SPECIAL VICTIMS' COUNSEL

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** Military investigators and trial counsel must provide notice of availability of VLC before interviewing or requesting statements from victim.

**Statute affected:** 10 USC 1044e(f), 10 USC 1656b(a).

### Text of Statute:

(a) TIMELY NOTICE DESCRIBED.—Section 1044e(f) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims’ Counsel shall be provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.”.

(b) CONFORMING AMENDMENT TO RELATED LEGAL ASSISTANCE AUTHORITY.—Section 1565b(a) of title 10, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph (3):

“(3) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims’ Counsel under section 1044e of this title shall be provided to a member of the armed forces or dependent who is the victim of sexual assault before any military criminal investigator or trial counsel interviews, or requests any statement from, the member or dependent regarding the alleged sexual assault.”.

### Amended Text of Affected Statutes:

10 USC 1044e. Special Victims’ Counsel for victims of sex-related offenses (section (f) only)

(f) Availability of Special Victims’ Counsel.

(1) An individual described in subsection (a)(2) who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims’ Counsel upon report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims’ Counsel shall be provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

~~(2)~~ (3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

10 USC 1565b. Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates (section (a) only)

(a) Availability of legal assistance and victim advocate services.

(1) A member of the armed forces, or a dependent of a member, who is the victim of a sexual assault may be provided the following:

(A) Legal assistance provided by military or civilian legal assistance counsel pursuant to section 1044 of this title [10 USCS § 1044].

(B) Assistance provided by a Sexual Assault Response Coordinator.

(C) Assistance provided by a Sexual Assault Victim Advocate.

(2) A member of the armed forces or dependent who is the victim of sexual assault shall be informed of the availability of assistance under paragraph (1) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a Sexual Assault Response Coordinator or a Sexual Assault Victim Advocate under paragraph (1) are optional and may be declined, in whole or in part, at any time.

(3) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel under section 1044e of this title shall be provided to a member of the armed forces or dependent who is the victim of sexual assault before any military criminal investigator or trial counsel interviews, or requests any statement from, the member or dependent regarding the alleged sexual assault.

~~(3)~~ (4) Legal assistance and the services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates under paragraph (1) shall be available to a member or dependent regardless of whether the member or dependent elects unrestricted or restricted (confidential) reporting of the sexual assault.

## SEC. 535. ADDITIONAL IMPROVEMENTS TO SPECIAL VICTIMS' COUNSEL PROGRAM

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**Implementation:** Immediate.

**Summary:** SECDEF to establish time period for VLC training and baseline training requirements; SECDEF and Services to establish VLC assignment guidance, performance measures and standards, and processes to evaluate VLC program.

**Statute affected:** Amends 10 USC 1044e(d), 1044e(e), 1044(d).

### Text of Statute:

(a) TRAINING TIME PERIOD AND REQUIREMENTS.—Section 1044e(d) of title 10, United States Code, is amended—

(1) by inserting “(1)” before “An individual”;

(2) by designating existing paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following new paragraph:

“(2) The Secretary of Defense shall—

“(A) develop a policy to standardize the time period within which a Special Victims’ Counsel receives training; and

“(B) establish the baseline training requirements for a Special Victims’ Counsel.”.

(b) IMPROVED ADMINISTRATIVE RESPONSIBILITY.—Section 1044e(e) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish—

“(A) guiding principles for the Special Victims’ Counsel program, to include ensuring that—

“(i) Special Victims’ Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and

“(ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;

“(B) performance measures and standards to measure the effectiveness of the Special Victims’ Counsel program and client satisfaction with the program; and

“(C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims’ Counsel program using such guiding principles and performance measures and standards.”.

(c) CONFORMING AMENDMENT REGARDING QUALIFICATIONS.—Section 1044(d)(2) of chapter 53 of title 10, United States Code is amended by striking “meets the additional qualifications specified in subsection (d)(2)” and inserting “satisfies the additional qualifications and training requirements specified in subsection (d)”.

**Amended Text of Affected Statutes:**

10 USC § 1044e. Special Victims' Counsel for victims of sex-related offenses

(a) Designation; purposes.

(1) The Secretary concerned shall designate legal counsel (to be known as "Special Victims' Counsel") for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title.

(B) An individual who is—

(i) not covered under subparagraph (A);

(ii) a member of a reserve component of the armed forces; and

(iii) a victim of an alleged sex-related offense as described in paragraph

(1)—

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.

(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims' Counsel services to the employee.

(b) Types of legal assistance authorized. The types of legal assistance authorized by subsection (a) include the following:

(1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(2) Legal consultation regarding the Victim Witness Assistance Program, including—

(A) the rights and benefits afforded the victim;

(B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and

(C) the nature of communication made to the liaison in comparison to communication made to a Special Victims' Counsel or a legal assistance attorney under section 1044 of this title.

(3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

- (4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).
- (5) Legal consultation regarding the military justice system, including (but not limited to)—
  - (A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;
  - (B) any proceedings of the military justice process in which the victim may observe;
  - (C) the Government’s authority to compel cooperation and testimony; and
  - (D) the victim’s responsibility to testify, and other duties to the court.
- (6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.
- (7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;
- (8) Legal consultation and assistance—
  - (A) in personal civil legal matters in accordance with section 1044 of this title.
  - (B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;
  - (C) in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and
  - (D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title and other State and Federal victims’ compensation programs.
- (9) Legal consultation and assistance in connection with—**
  - (A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;**
  - (B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a ‘Freedom of Information Act request’); and**
  - (C) any correspondence or other communications with Congress.**
- ~~(9)~~ **(10)** Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection (h).

(c) Nature of relationship. The relationship between a Special Victims’ Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(d) Qualifications.

- (1)** An individual may not be designated as a Special Victims’ Counsel under this section unless the individual—
  - ~~(1)~~ **(A)** meets the qualifications specified in section 1044(d)(2) of this title; and

~~(2)~~ (B) is certified as competent to be designated as a Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) The Secretary of Defense shall—

(A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and

(B) establish the baseline training requirements for a Special Victims' Counsel.

(e) Administrative responsibility.

(1) Consistent with the regulations prescribed under subsection (h), the Judge Advocate General (as defined in section 801(1) of this title under the jurisdiction of the Secretary concerned, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of individuals designated as Special Victims' Counsel.

(2) The Secretary of Defense (and, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) shall conduct a periodic evaluation of the Special Victims' Counsel programs operated under this section.

(3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish—

(A) guiding principles for the Special Victims' Counsel program, to include ensuring that—

(i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and

(ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;

(B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and  
(C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.

(f) Availability of Special Victims' Counsel.

(1) An individual described in subsection (a)(2) who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims' Counsel upon report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel shall be provided to an individual

described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

~~(2)~~ (3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

(g) Alleged sex-related offense defined. In this section, the term "alleged sex-related offense" means any allegation of—

(1) a violation of section 920, 920a, 920b, 920c, or 925 of this title (article 120, 120a, 120b, 120c, or 125 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

(h) Regulations. The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

#### 10 USC 1044. Legal assistance (section (d) only)

(d) (1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.

(2) Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State and, for purposes of service as a Special Victims' Counsel under section 1044e of this title [10 USCS § 1044e], ~~meets the additional qualifications specified in subsection (d)(2)~~ **satisfies the additional qualifications and training requirements specified in subsection (d)** of such section.

(3) In this subsection, the term "military legal assistance" includes—

(A) legal assistance provided under this section; and

(B) legal assistance contemplated by sections 1044a, 1044b, 1044c, 1044d, 1044e, and 1565b(a)(1)(A) of this title [10 USCS §§ 1044a, 1044b, 1044c, 1044d, 1044e, and 1565b(a)(1)(A)].

## SEC. 536. ENHANCEMENT OF CONFIDENTIALITY OF RESTRICTED REPORTING OF SEXUAL ASSAULT IN THE MILITARY

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**Implementation:** Immediate.

**Summary:** State requirement to disclose the identity of an adult victim or suspect shall not apply except when necessary for health and safety of an individual.

**Statute affected:** 10 USC 1565b.

### Text of Statute:

(a) PREEMPTION OF STATE LAW TO ENSURE CONFIDENTIALITY OF REPORTING.—Section 1565b(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) In the case of information disclosed pursuant to paragraph (1), any State law or regulation that would require an individual specified in paragraph (2) to disclose the personally identifiable information of the adult victim or alleged perpetrator of the sexual assault to a State or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual.”.

(b) CLARIFICATION OF SCOPE.—Section 1565b(b)(1) of title 10, United States Code, is amended by striking “a dependent” and inserting “an adult dependent”.

(c) DEFINITIONS.—Section 1565b of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) DEFINITIONS.—In this section:

“(1) SEXUAL ASSAULT.—The term ‘sexual assault’ includes the offenses of rape, sexual assault, forcible sodomy, aggravated sexual contact, abusive sexual contact, and attempts to commit such offenses, as punishable under applicable Federal or State law.

“(2) STATE.—The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.”.

### Amended Text of Affected Statute:

10 USC § 1565b. Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates

(a) Availability of legal assistance and victim advocate services.

(1) A member of the armed forces, or a dependent of a member, who is the victim of a sexual assault may be provided the following:

(A) Legal assistance provided by military or civilian legal assistance counsel pursuant to section 1044 of this title.

(B) Assistance provided by a Sexual Assault Response Coordinator.

(C) Assistance provided by a Sexual Assault Victim Advocate.

(2) A member of the armed forces or dependent who is the victim of sexual assault shall be informed of the availability of assistance under paragraph (1) as soon as the member

or dependent seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a Sexual Assault Response Coordinator or a Sexual Assault Victim Advocate under paragraph (1) are optional and may be declined, in whole or in part, at any time.

(3) Legal assistance and the services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates under paragraph (1) shall be available to a member or dependent regardless of whether the member or dependent elects unrestricted or restricted (confidential) reporting of the sexual assault.

(b) Restricted reporting.

(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces, or a ~~dependent~~ **an adult dependent** of a member, who is the victim of a sexual assault may elect to confidentially disclose the details of the assault to an individual specified in paragraph (2) and receive medical treatment, legal assistance under sections 1044 and 1044e of this, or counseling, without initiating an official investigation of the allegations.

(2) The individuals specified in this paragraph are the following:

(A) A Sexual Assault Response Coordinator.

(B) A Sexual Assault Victim Advocate.

(C) Healthcare personnel specifically identified in the regulations required by paragraph (1).

(3) **In the case of information disclosed pursuant to paragraph (1), any State law or regulation that would require an individual specified in paragraph (2) to disclose the personally identifiable information of the adult victim or alleged perpetrator of the sexual assault to a State or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual.**

(c) Definitions.—In this section:

(1) **SEXUAL ASSAULT.**—The term ‘sexual assault’ includes the offenses of rape, sexual assault, forcible sodomy, aggravated sexual contact, abusive sexual contact, and attempts to commit such offenses, as punishable under applicable Federal or State law.

(2) **STATE.**—The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

**SEC. 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** 90 days from bill's enactment (23 February 2016).

**Summary:** Change in date to establish the Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces.

**Statute affected:** Note to 10 USC 1561.

**Text of Statute:** Section 546(a)(2) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking "not later than" and all that follows and inserting "not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016."

**Amended Text of Affected Statute:**

Section 546 of the FY15 NDAA reads in part:

(a) Establishment required.

(1) In general. The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the 'Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces' (in this section referred to as the 'Advisory Committee').

(2) Deadline for establishment. The Secretary shall establish the Advisory **Committee not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.** ~~not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758) [unclassified], known as the 'judicial proceedings panel' not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.~~

(b) Membership. The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) Duties.

(1) In general. The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

(2) Basis for provision of advice. For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) Annual reports. Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) Termination.

(1) In general. Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).

(2) Continuation. The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

**SEC. 538. IMPROVED DEPARTMENT OF DEFENSE PREVENTION AND RESPONSE TO SEXUAL ASSAULTS IN WHICH THE VICTIM IS A MALE MEMBER OF THE ARMED FORCES**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** Improved plan to address male victims of sexual assault.

**Statute affected:** None.

**Text of Statute:**

(a) **PLAN TO IMPROVE PREVENTION AND RESPONSE.**—The Secretary of Defense, in collaboration with the Secretaries of the military departments, shall develop a plan to improve Department of Defense prevention and response to sexual assaults in which the victim is a male member of the Armed Forces.

(b) **ELEMENTS.**—The plan required by subsection (a) shall include the following:

- (1) Sexual assault prevention and response training to more comprehensively and directly address the incidence of male members of the Armed Forces who are sexually assaulted and how certain behavior and activities, such as hazing, can constitute a sexual assault.
- (2) Methods to evaluate the extent to which differences exist in the medical and mental health-care needs of male and female sexual assault victims, and the care regimen, if any, that will best meet those needs.
- (3) Data-driven decision making to improve male-victim sexual assault prevention and response program efforts.
- (4) Goals with associated metrics to drive the changes needed to address sexual assaults of male members of the Armed Forces.
- (5) Information about the sexual victimization of males in communications to members that are used to raise awareness of sexual assault and efforts to prevent and respond to it.
- (6) Guidance for the department’s medical and mental health providers, and other personnel as appropriate, based on the results of the evaluation described in paragraph (2), that delineates these gender-specific distinctions and the care regimen that is recommended to most effectively meet those needs.

**SEC. 539. PREVENTING RETALIATION AGAINST MEMBERS OF THE ARMED FORCES WHO REPORT OR INTERVENE ON BEHALF OF THE VICTIM OF AN ALLEGED SEX-RELATED OFFENCE**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** SECDEF shall develop a strategy to prevent retaliation against those who report or assist a victim of sexual assault.

**Statute affected:** None.

**Text of Statute:**

(a) **STRATEGY REQUIRED.**—The Secretary of Defense shall develop a comprehensive strategy to prevent retaliation carried out by members of the Armed Forces against other members who report or otherwise intervene on behalf of the victim of an alleged sex-related offence.

(b) **ELEMENTS.**—The comprehensive strategy required by subsection (a) shall include, at a minimum, the following:

(1) Bystander intervention programs emphasizing the importance of guarding against retaliation.

(2) Department of Defense and military department policies and requirements to ensure protection for victims of alleged sex-related offences and members who intervene on behalf of victims from retaliation.

(3) Additional training for commanders on methods and procedures to combat attitudes and beliefs that result in retaliation.

(c) **DEFINITIONS.**—For purposes of this section:

(1) The term “alleged sex-related offence” has the meaning given that term in section 1044e(g) of title 10, United States Code.

(2) The term “retaliation” has such meaning as may be given that term by the Secretary of Defense in the development of the strategy required by subsection (a).

**SEC. 540. SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING FOR ADMINISTRATORS AND INSTRUCTORS OF SENIOR RESERVE OFFICERS' TRAINING CORPS**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** All Senior Officer Reserve Training Corps shall receive regular SAPR training.

**Statute affected:** None.

**Text of Statute:** The Secretary of a military department shall ensure that the commander of each unit of the Senior Reserve Officers' Training Corps and all Professors of Military Science, senior military instructors, and civilian employees detailed, assigned, or employed as administrators and instructors of the Senior Reserve Officers' Training Corps receive regular sexual assault prevention and response training and education.

**SEC. 541. RETENTION OF CASE NOTES IN INVESTIGATIONS OF SEX-RELATED OFFENSES INVOLVING MEMBERS OF THE ARMY, NAVY, AIR FORCE, OR MARINE CORPS**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** SECDEF shall develop a strategy to prevent retaliation against those who report or assist a victim of sexual assault.

**Statute affected:** None; DoD and Service policies and regulations to be updated.

**Text of Statute:**

(a) **RETENTION OF ALL INVESTIGATIVE RECORDS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall update Department of Defense records retention policies to ensure that, for all investigations relating to an alleged sex-related offense (as defined in section 1044e(g) of title 10, United States Code) involving a member of the Army, Navy, Air Force, or Marine Corps, all elements of the case file shall be retained as part of the investigative records retained in accordance with section 586 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note).

(b) **ELEMENTS.**—In updating records retention policies as required by subsection (a), the Secretary of Defense shall address, at a minimum, the following matters:

(1) The elements of the case file to be retained must include, at a minimum, the case activity record, case review record, investigative plans, and all case notes made by an investigating agent or agents.

(2) All investigative records must be retained for no less than 50 years.

(3) No element of the case file may be destroyed until the expiration of the time that investigative records must be kept.

(4) Records may be stored digitally or in hard copy, in accordance with existing law or regulations or additionally prescribed policy considered necessary by the Secretary of the military department concerned.

(c) **CONSISTENT EDUCATION AND POLICY.**—The Secretary of Defense shall ensure that existing policy, education, and training are updated to reflect policy changes in accordance with subsection (a).

(d) **UNIFORM APPLICATION TO MILITARY DEPARTMENTS.**—The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsections (a) is implemented uniformly by the military departments.

**SEC. 542. COMPTROLLER GENERAL OF THE UNITED STATES REPORTS ON PREVENTION AND RESPONSE TO SEXUAL ASSAULT BY THE ARMY NATIONAL GUARD AND THE ARMY RESERVE**

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**Implementation:** Report due NLT 1 April 2016.

**Summary:** The Comptroller General to submit a report on Army National Guard and Army Reserve sexual assault prevention and response efforts.

**Statute affected:** None.

**Text of Statute:**

(a) INITIAL REPORT.—Not later than April 1, 2016, the Comptroller General of the United States shall submit to Congress a report on the preliminary assessment of the Comptroller General (made pursuant to a review conducted by the Comptroller General for purposes of this section) of the extent to which the Army National Guard and the Army Reserve—

- (1) have in place policies and programs to prevent and respond to incidents of sexual assault involving members of the Army National Guard or the Army Reserve, as applicable;
- (2) provide medical and mental health care services to members of the Army National Guard or the Army Reserve, as applicable, following a sexual assault; and
- (3) have identified whether the nature of service in the Army National Guard or the Army Reserve, as the case may be, poses challenges to the prevention of or response to sexual assault.

(b) ADDITIONAL REPORTS.—If after submitting the report required by subsection (a) the Comptroller General makes additional assessments as a result of the review described in that subsection, the Comptroller General shall submit to Congress such reports on such additional assessments as the Comptroller General considers appropriate.

**SEC. 543. IMPROVED IMPLEMENTATION OF CHANGES TO UNIFORM CODE OF MILITARY JUSTICE**

[\[TABLE OF CONTENTS\]](#)

**Implementation:** Immediate.

**Summary:** The Secretary of Defense is to review procedures for implementation of changes to the UCMJ.

**Statute affected:** None.

**Text of Statute:** The Secretary of Defense shall examine the Department of Defense process for implementing statutory changes to the Uniform Code of Military Justice for the purpose of developing options for streamlining such process. The Secretary shall adopt procedures to ensure that legal guidance is published as soon as practicable whenever statutory changes to the Uniform Code of Military Justice are implemented.

**SEC. 544. MODIFICATION OF RULE 104 OF THE RULES FOR COURTS-MARTIAL TO ESTABLISH CERTAIN PROHIBITIONS CONCERNING EVALUATIONS OF SPECIAL VICTIMS' COUNSEL**

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**Implementation:** By 23 May 2016, the President will sign an executive order amending RCM 104(b). See pending executive order in the Federal Register published on 19 October 2015 (Vol. 80, No. 201).

**Summary:** Prohibitions against providing less favorable evaluations for defense counsel to apply to VLC as well.

**Statute affected:** None; implementation via RCM 104(b) and Service policies.

**Text of Statute:** Not later than 180 days after the date of the enactment of this Act, Rule 104(b) of the Rules for Courts-Martial shall be modified to provide that the prohibitions concerning evaluations established by that Rule shall apply to the giving of a less favorable rating or evaluation to any member of the Armed Forces serving as a Special Victims' Counsel because of the zeal with which such counsel represented a victim.

**SEC. 545. MODIFICATION OF RULE 304 OF THE MILITARY RULES OF EVIDENCE  
RELATING TO THE CORROBORATION OF A CONFESSION OR ADMISSION**

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**Implementation:** Effective when the President signs an executive order amending MRE 304(c). See pending executive order in the Federal Register published on 19 October 2015 (Vol. 80, No. 201).

**Summary:** The President is to modify MRE 304(c) to conform to practice in U.S. District Courts.

**Statute affected:** None; implementation via MRE 304(c).

**Text of Statute:** To the extent the President considers practicable, the President shall modify Rule 304(c) of the Military Rules of Evidence to conform to the rules governing the admissibility of the corroboration of admissions and confessions in the trial of criminal cases in the United States district courts.