

National Defense Authorization Act
for Fiscal Year 2014

H.R. 3304 (FY14 NDAA)

**SUMMARY OF MILITARY JUSTICE
AND SAPR PROVISIONS**

**Military Justice Branch, HQMC (JAM)
9 January 2014**

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EXECUTIVE SUMMARY

The FY14 NDAA makes significant changes to the militaries' sexual assault prevention and response programs, the military justice system, and to related programs. The following executive summary provides synopses of changes in various areas.

Eligibility to Serve on CAAF—Sec. [531](#). The President may now consider retired military members for appointment for service as a judge on CAAF after a seven year cooling off period.

Study of Providing Transitional Compensation for Dependents Separated Under UCMJ—Sec. [652](#). Requires SecDef to conduct a study regarding the merits and feasibility of providing transitional compensation and other transitional benefits, under certain circumstances, to dependents or former dependents of members of the Armed Forces who are separated from the Armed Forces for a violation of the UCMJ.

Crime Victims Rights—Sec. [1701](#), [1704](#), [1706](#), [1747](#). Statutorily incorporates the Crime Victims Rights Act (CVRA) into military justice. The SecDef will have discretion to determine how to implement and notify victims of these rights ([1701](#)). Additionally, victims will have the right to have trial counsel or victim counsel present when being interviewed by the defense ([1704](#)), and the right to submit post-trial matters for consideration by the convening authority ([1706](#)). Finally, requires notification to service members completing the SF86 security questionnaire that they do not need to divulge mental health treatment they received as a result of a sexual assault ([1747](#)).

Revision of Article 32 and Article 60, UCMJ—Sec. [1702](#). Limits the scope of Article 32 hearings to avoid it becoming a discovery tool, and retitles it as a “preliminary hearing.” The investigating officer, whenever practicable, will be a Judge Advocate and equal or greater in rank to the other counsel involved in the case. All victims (military and civilian) will have the right to decline to testify. Significantly modifies Article 60 to prevent a convening authority (CA) from modifying the findings of a court-martial in many cases. Also limits CA's ability to modify adjudged sentence, except for pre-trial agreements and other limited circumstances.

Elimination of 5-year SOL for sex-related crimes—Sec. [1703](#). Adds sexual assault and sexual assault of a child to the list of offenses with no statute of limitations.

Other Modifications to the Manual for Courts-Martial—Sec. [1705](#), [1707](#), [1708](#). Requires that only a general court-martial be used for certain sex offenses, and mandates a dishonorable discharge or dismissal if convicted of those offenses ([1705](#)); repeals the offense of consensual sodomy under the UCMJ ([1707](#)); and eliminates “character and military service” as factors to be considered by a commander when making a disposition decision under RCM 306 ([1708](#)).

Prevention of Retaliation against Victims—Sec. [1709](#), [1714](#), [1715](#). Requires the Services to prescribe regulations that prohibit retaliation against an alleged victim who report a criminal offense ([1709](#)); expands the definition of a retaliatory personnel action ([1714](#)); and expands the IG's requirement to investigate allegations of victim retaliation ([1715](#)).

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Policy on reassignment or removal of a member accused of committing a sexual assault—Sec. [1713](#). SecDef may provide guidance for commanders regarding their authority to reassign members alleged to have committed certain sexual offenses.

Prohibition on Service in the Armed Forces by Certain Convicted Sex-offenders—Sec. [1711](#). Prohibits those convicted of rape, sexual assault, sodomy, incest, or other equivalent offenses, from entering the military.

Special Victims' Counsel—Sec. [1716](#). Requires the services to establish special victims' counsel (SVC) to provide legal assistance to eligible victims of alleged sex-related offenses.

Command Climate Survey Tracking—Sec. [1721](#). Requires the Service Secretaries to verify and track completion of command climate surveys.

Response Systems Panel Modifications—Sec. [1722](#), [1731](#). Shortens the RSP's timeline from 18 months to 12 months ([1722](#)). Also requires the RSP to conduct several additional assessments, including: effects of removing the chain of command from UCMJ, whether SVCs' roles should be expanded to include standing, and an assessment of clemency in the military system ([1731](#)).

Retention of Documents Related to Restricted and Unrestricted Reports of Sexual Assault—Sec. [1723](#), [1734](#). Requires retention of documents related to restricted and unrestricted reports, and eliminates the requirement for the victim to ask to have them retained ([1723](#)). Also requires a report on progress made to ensure retention of evidence and records related to sexual assaults ([1734](#)).

Sexual Assault Prevention and Response—Sec. [1724](#), [1725](#), [1726](#), [1746](#). Requires the Services to provide National Guard and Reserve victims of sexual assault timely access to SARCs ([1724](#)). Requires DoD to standardize the qualification requirements for SARCs, VAs, and others, and provide a report on the adequacy of their training and qualifications ([1725](#)). Also, requires the assignment of a sexual assault nurse examiner to every military medical treatment facility ([1725](#)). Finally, the legislation expands the responsibilities of the DOD SAPRO office to include collecting and maintaining certain data on sexual assaults ([1726](#)) and requires the Service Academies to incorporate sexual assault prevention training in their curricula ([1746](#)).

Mandated Reviews of Sexual Assault Prevention Programs—Sec. [1732](#), [1733](#), [1735](#). Requires DoD to conduct a review of investigative techniques of the various Services, including whether the investigative organization makes a "founded/unfounded" determination at the conclusion of the investigation. Based on the report, DoD must then standardize their investigative practices ([1732](#)). DoD must also conduct a review of the Services' sexual assault prevention training and provide a report to the Committees within 120 days ([1733](#)). Finally, DoD must conduct a review of the Office of Diversity Management and EO and why they process sexual harassment cases instead of DoD SAPRO ([1735](#)).

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Enhanced Protections for New Recruits and Trainees—Sec. [1741](#). Requires a policy that defines inappropriate and prohibited relationships between Service Members and potential recruits and entry-level trainees. Service members who violate the policy must be processed for administrative separation after the first violation.

Sexual Assault Reporting Requirements—Sec. [1742](#), [1743](#). Commanders must report allegations of sexual assault to military criminal investigators immediately ([1742](#)). Within 8 days, a detailed written incident report must be provided to the installation commander and the first O-6 and first GO in the chain of command of the victim and the perpetrator ([1743](#)).

Review of Decisions not to Refer Sexual Assault Cases to Trial (Levin Amendment)—Sec. [1744](#). Requires the Service Secretary to review sex offense cases in which the SJA recommended referral to court-martial and the convening authority elected not to. Even in cases in which the SJA and convening authority agree the case should not be referred, the case must be reviewed by the next higher convening authority.

Inclusion of Sex-related Offenses in Personnel Service Records—Sec. [1745](#). Requires personnel records be annotated if a Member was convicted by a court-martial, received non-judicial punishment, or adverse administrative action for a sex-related offense. This information will then be reviewed by the gaining-unit commander whenever the Soldier transfers units.

Sense of Congress—Sec. [1751](#), [1752](#), [1753](#). Expresses the sense of Congress that commanders are responsible for setting a climate free of retaliation and those that fail should be relieved ([1751](#)); that certain sexual assault offenses should be disposed of at court-martial ([1752](#)); and that discharges in lieu of court-martial for these offenses should be used sparingly ([1753](#)).

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H.R. 3304 §531 [\[Table of Contents\]](#)

SUMMARY

- Military experience is no longer a disqualifying factor for service as a judge on CAAF. The President may now consider retired military members for appointment after a seven year cooling off period.

Implementation Timeline

- Immediate implementation

TEXT

MODIFICATION OF ELIGIBILITY FOR APPOINTMENT AS JUDGE ON THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.

(a) Modification- Paragraph (4) of section 942(b) of title 10, United States Code (article 142(b) of the Uniform Code of Military Justice), is amended to read as follows:

‘(4) A person may not be appointed as a judge of the court within seven years after retirement from active duty as a commissioned officer of a regular component of an armed force.’

(b) Effective Date- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to appointments to the United States Court of Appeals for the Armed Forces that occur on or after that date.

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H.R. 3304 §652 [\[Table of Contents\]](#)

SUMMARY

- SecDef shall conduct a study regarding the merits and feasibility of providing transitional compensation and other transitional benefits, under certain circumstances, to dependents or former dependents of members of the Armed Forces who are separated from the Armed Forces for a violation of the UCMJ.

Implementation Timeline

- 180 Day Implementation (24 June 2014)

TEXT

STUDY OF THE MERITS AND FEASIBILITY OF PROVIDING TRANSITIONAL COMPENSATION AND OTHER TRANSITIONAL BENEFITS TO DEPENDENTS OF MEMBERS SEPARATED FOR VIOLATION OF THE UNIFORM CODE OF MILITARY JUSTICE.

(a) Study Required- The Secretary of Defense shall conduct a study regarding the merits and feasibility of providing transitional compensation and other transitional benefits to dependents or former dependents of members of the Armed Forces who are separated from the Armed Forces for a violation of the Uniform Code of Military Justice under the circumstances described in subsection (b).

(b) Covered Members and Circumstances- The scope of the study required by subsection (a) is limited to those circumstances in which members of the Armed Forces--

(1) are convicted by court-martial of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice);

(2) are separated from active duty pursuant to the sentence of the court-martial;
and

(3) forfeit all pay and allowances pursuant to such sentence.

(c) Study Elements- In conducting the study required by subsection (a), the Secretary of Defense shall consider the following:

(1) The appropriateness of providing transitional compensation and other benefits, including commissary and exchange benefits, to dependents or former dependents of members described in subsection (b), particularly in situations in which such dependents or former dependents would be entitled, or soon be entitled, to such benefits on account of the years of service of a member.

(2) Whether there may be instances in which the provision of such transitional compensation would not be appropriate.

(3) Whether such transitional compensation should be limited to dependent children of members described in subsection (b).

(4) The appropriate duration of such transitional compensation for such dependents or former dependents.

(5) The potential duplication of such transitional compensation with benefits otherwise available for such dependents or former dependents under title 10, United States Code, or other laws.

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(d) Submission of Results- Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of the study required by subsection (a), including the Secretary's determination regarding the need for transitional compensation.

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H.R. 3304 §1701 [\[Table of Contents\]](#)

SUMMARY

- Incorporates all 8 CVRA rights into UCMJ, specifically, Art. 6b, UCMJ:
 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 Article 32.
 - 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 unless the military judge or investigating officer determines after receiving clear and convincing evidence that testimony by the victim would be materially altered.
 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 government in any of the proceedings under 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.
- Rather than an enforcement mechanism through a military court, the provision requires SecDef to establish an enforcement mechanism. SecDef shall prescribe mechanisms for ensuring victims are notified of and accorded their rights, and enforcement of such rights, including designation of an authority in each service to receive and investigate complaints and disciplinary sanctions for “willful or wanton” failure to comply with requirements relating to such rights.

Implementation Timeline

- Immediate implementation of change to Art. 6b.
- 1 Year Implementation (26 December 2014) for regulations to implement changes to Art. 6b.

TEXT

EXTENSION OF CRIME VICTIMS’ RIGHTS TO VICTIMS OF OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) VICTIMS’ RIGHTS.—

(1) IN GENERAL.—Subchapter I of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by adding at the end the following new section (article):

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“§ 806b. Art. 6b. Rights of the victim of an offense under this chapter

“(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 a person 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) LEGAL GUARDIAN FOR CERTAIN VICTIMS.—In the case of a victim of an offense under this chapter who is under 18 years of age, incompetent, incapacitated, or deceased, the military judge shall designate a legal guardian from among the representatives of the estate of the victim, a family member, or other suitable person to assume the victim’s rights under this section. However, in no event may the person 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.”

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(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 47 of such title (the Uniform Code of Military Justice) is amended by adding at the end the following new item:

“806b. Art. 6b. Rights of the victim of an offense under this chapter.”.

(b) IMPLEMENTATION.—

(1) ISSUANCE.—Not later than one year after the date of the enactment of this Act—

(A) the Secretary of Defense shall recommend to the President changes to the Manual for Courts-Martial to implement section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), as added by subsection (a); and

(B) the Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) shall prescribe such regulations as each such Secretary considers appropriate to implement such section.

(2) MECHANISMS FOR AFFORDING RIGHTS.—The recommendations and regulations required by paragraph (1) shall include the following:

(A) Mechanisms for ensuring that victims are notified of, and accorded, the rights specified in section 806b of title 10, United States Code (article 6b of the Uniform Code of Military Justice), as added by subsection (a).

(B) Mechanisms for ensuring that members of the Armed Forces and civilian personnel of the Department of Defense and the Coast Guard make their best efforts to ensure that victims are notified of, and accorded, the rights specified in such section.

(C) Mechanisms for the enforcement of such rights, including mechanisms for application for such rights and for consideration and disposition of applications for such rights.

(D) The designation of an authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights.

(E) Disciplinary sanctions for members of the Armed Forces and other personnel of the Department of Defense and Coast Guard who willfully or wantonly fail to comply with requirements relating to such rights.

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H.R. 3304 §1702 [\[Table of Contents\]](#)

SUMMARY

- This section makes major changes to Art. 32 Investigations and Art. 60 post-trial action.
- Article 32 changes
 - Retitles investigation as a preliminary hearing with 4 purposes:
 - Probable cause determination;
 - Jurisdiction determination;
 - Consider form of charges; and
 - Recommend disposition of case.
 - Hearing officer requirements
 - Must be JA “whenever practicable.”
 - Must not be outranked by either counsel “whenever practicable.”
 - May investigate uncharged misconduct.
 - Procedure
 - Accused has right to cross-examine witnesses and present additional evidence within the scope of the stated purpose of the hearing.
 - Victim may not be compelled to testify and shall be declared unavailable at Art. 32 hearing if declines to participate.
 - Hearings shall be recorded and the recording shall be made available to the victim upon request.
- Article 60 changes
 - A complete revision of the authority to take post-trial action under Article 60.
 - Allowable action on findings and sentence will vary based on whether there is a qualifying offense, and for sentencing, whether there the offenses contain mandatory minimums, whether there was a pretrial agreement, and whether the accused provided “substantial assistance” to the government in investigation or prosecution of another person.

Implementation Timeline

- 1 Year Implementation (26 December 2014) for Article 32 amendments.
- 180 Day Implementation (24 June 2014) for Article 60 amendments.

TEXT

REVISION OF ARTICLE 32 AND ARTICLE 60, UNIFORM CODE OF MILITARY JUSTICE.

(a) USE OF PRELIMINARY HEARINGS.—

(1) IN GENERAL.—Section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 832. Art. 32. Preliminary hearing

“(a) PRELIMINARY HEARING REQUIRED.—(1) No charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing.

“(2) The purpose of the preliminary hearing shall be limited to the following:

“(A) Determining whether there is probable cause to believe an offense has been committed and the accused committed the offense.

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“(B) Determining whether the convening authority has court-martial jurisdiction over the offense and the accused.

“(C) Considering the form of charges.

“(D) Recommending the disposition that should be made of the case.

“(b) HEARING OFFICER.—(1) A preliminary hearing under subsection (a) shall be conducted by an impartial judge advocate certified under section 827(b) of this title (article 27(b)) whenever practicable or, in exceptional circumstances in which the interests of justice warrant, by an impartial hearing officer who is not a judge advocate. If the hearing officer is not a judge advocate, a judge advocate certified under section 827(b) of this title (article 27(b)) shall be available to provide legal advice to the hearing officer.

“(2) Whenever practicable, when the judge advocate or other hearing officer is detailed to conduct the preliminary hearing, the officer shall be equal to or senior in grade to military counsel detailed to represent the accused or the Government at the preliminary hearing.

“(c) REPORT OF RESULTS.—After conducting a preliminary hearing under subsection (a), the judge advocate or other officer conducting the preliminary hearing shall prepare a report that addresses the matters specified in subsections (a)(2) and (f).

“(d) RIGHTS OF ACCUSED AND VICTIM.—(1) The accused shall be advised of the charges against the accused and of the accused’s right to be represented by counsel at the preliminary hearing under subsection (a). The accused has the right to be represented at the preliminary hearing as provided in section 838 of this title (article 38) and in regulations prescribed under that section.

“(2) The accused may cross-examine witnesses who testify at the preliminary hearing and present additional evidence in defense and mitigation, relevant to the limited purposes of the hearing, as provided for in paragraph (4) and subsection (a)(2).

“(3) A victim may not be required to testify at the preliminary hearing. A victim who declines to testify shall be deemed to be not available for purposes of the preliminary hearing.

“(4) The presentation of evidence and examination (including cross-examination) of witnesses at a preliminary hearing shall be limited to the matters relevant to the limited purposes of the hearing, as provided in subsection (a)(2).

“(e) RECORDING OF PRELIMINARY HEARING.—A preliminary hearing under subsection (a) shall be recorded by a suitable recording device. The victim may request the recording and shall have access to the recording as prescribed by the Manual for Courts-Martial.

“(f) EFFECT OF EVIDENCE OF UNCHARGED OFFENSE.—If evidence adduced in a preliminary hearing under subsection (a) indicates that the accused committed an uncharged offense, the hearing officer may consider the subject matter of that offense without the accused having first been charged with the offense if the accused—

“(1) is present at the preliminary hearing;

“(2) is informed of the nature of each uncharged offense considered; and

“(3) is afforded the opportunities for representation, cross-examination, and presentation consistent with subsection (d).

“(g) EFFECT OF VIOLATION.—The requirements of this section are binding on all persons administering this chapter, but failure to follow the requirements does not constitute jurisdictional error.

“(h) VICTIM DEFINED.—In this section, the term ‘victim’ means a person who—

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“(1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and

“(2) is named in one of the specifications.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter VI of chapter 47 of such title is amended by striking the item relating to section 832 and inserting the following new item:

“832. Art 32. Preliminary hearing.”.

(b) ELIMINATION OF UNLIMITED COMMAND PREROGATIVE AND DISCRETION; IMPOSITION OF ADDITIONAL LIMITATIONS.—Subsection (c) of section 860 of title 10, United States Code (article 60 of the Uniform Code of Military Justice), is amended to read as follows:

“(c)(1) Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

“(2)(A) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

“(B) Except as provided in paragraph (4), the convening authority or another person authorized to act under this section may approve, disapprove, commute, or suspend the sentence of the court-martial in whole or in part.

“(C) If the convening authority or another person authorized to act under this section acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense person shall provide, at that same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of the trial and action thereon.

“(3)(A) Action on the findings of a court-martial by the convening authority or by another person authorized to act under this section is not required.

“(B) If the convening authority or another person authorized to act under this section acts on the findings of a court-martial, the convening authority or other person—

“(i) may not dismiss any charge or specification, other than a charge or specification for a qualifying offense, by setting aside a finding of guilty thereto; or

“(ii) may not change a finding of guilty to a charge or specification, other than a charge or specification for a qualifying offense, to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

“(C) If the convening authority or another person authorized to act under this section acts on the findings to dismiss or change any charge or specification for an offense (other than a qualifying offense), the convening authority or other person shall provide, at that same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of the trial and action thereon.

“(D)(i) In this subsection, the term ‘qualifying offense’ means, except in the case of an offense excluded pursuant to clause (ii), an offense under this chapter for which—

“(I) the maximum sentence of confinement that may be adjudged does not exceed two years; and

“(II) the sentence adjudged does not include dismissal, a dishonorable or bad-conduct discharge, or confinement for more than six months.

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“(ii) Such term does not include any of the following:

“(I) An offense under subsection (a) or (b) of section 920 of this title (article 120).

“(II) An offense under section 920b or 925 of this title (articles 120b and 125).

“(III) Such other offenses as the Secretary of Defense may specify by regulation.

“(4)(A) Except as provided in subparagraph (B) or (C), the convening authority or another person authorized to act under this section may not disapprove, commute, or suspend in whole or in part an adjudged sentence of confinement for more than six months or a sentence of dismissal, dishonorable discharge, or bad conduct discharge.

“(B) Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this section shall have the authority to disapprove, commute, or suspend the adjudged sentence in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

“(C) If a pre-trial agreement has been entered into by the convening authority and the accused, as authorized by Rule for Courts–Martial 705, the convening authority or another person authorized to act under this section shall have the authority to approve, disapprove, commute, or suspend a sentence in whole or in part pursuant to the terms of the pre-trial agreement, subject to the following limitations for convictions of offenses that involve a mandatory minimum sentence:

“(i) If a mandatory minimum sentence of a dishonorable discharge applies to an offense for which the accused has been convicted, the convening authority or another person authorized to act under this section may commute the dishonorable discharge to a bad conduct discharge pursuant to the terms of the pre-trial agreement.

“(ii) Except as provided in clause (i), if a mandatory minimum sentence applies to an offense for which the accused has been convicted, the convening authority or another person authorized to act under this section may not disapprove, otherwise commute, or suspend the mandatory minimum sentence in whole or in part, unless authorized to do so under subparagraph (B).”.

(c) CONFORMING AMENDMENTS.—

(1) REFERENCES TO SOLE DISCRETION AND OTHER PERSONS AUTHORIZED TO ACT UNDER ARTICLE 60.—Section 860 of title 10, United States Code (article 60 of the Uniform Code of Military Justice), is further amended—

(A) in subsection (b)(2), by striking “or other person taking action under this section” and inserting “or another person authorized to act under this section”;

(B) in subsection (d), by striking “or other person taking action under this section” the first place it appears and inserting “or another person authorized to act under this section”;

(C) in subsection (e)(1), by striking “or other person taking action under this section, in his sole discretion,” and inserting “or another person authorized to act under this section”; and

(D) in subsection (e)(3), by striking “or other person taking action under this section” and inserting “or another person authorized to act under this section”.

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(2) OTHER AUTHORITY FOR CONVENING AUTHORITY TO SUSPEND SENTENCE.—Section 871(d) of such title (article 71(d) of the Uniform Code of Military Justice) is amended by adding at the end the following new sentence: “Paragraphs (2) and (4) of subsection (c) of section 860 of this title (article 60) shall apply to any decision by the convening authority or another person authorized to act under this section to suspend the execution of any sentence or part thereof under this subsection.”.

(3) REFERENCES TO ARTICLE 32 INVESTIGATION.—(A) Section 802(d)(1)(A) of such title (article 2(d)(1)(A) of the Uniform Code of Military Justice) is amended by striking “investigation under section 832” and inserting “a preliminary hearing under section 832”.

(B) Section 834(a)(2) of such title (article 34(a)(2) of the Uniform Code of Military Justice) is amended by striking “investigation under section 832 of this title (article 32) (if there is such a report)” and inserting “a preliminary hearing under section 832 of this title (article 32)”.

(C) Section 838(b)(1) of such title (article 38(b)(1) of the Uniform Code of Military Justice) is amended by striking “an investigation under section 832” and inserting “a preliminary hearing under section 832”.

(D) Section 847(a)(1) of such title (article 47(a)(1) of the Uniform Code of Military Justice) is amended by striking “an investigation pursuant to section 832(b) of this title (article 32(b))” and inserting “a preliminary hearing pursuant to section 832 of this title (article 32)”.

(E) Section 948b(d)(1)(C) of such title is amended by striking “pretrial investigation” and inserting “preliminary hearing”.

(d) EFFECTIVE DATES.—

(1) ARTICLE 32 AMENDMENTS.—The amendments made by subsections (a) and (c)(3) shall take effect one year after the date of the enactment of this Act and shall apply with respect to offenses committed under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), on or after that effective date.

(2) ARTICLE 60 AMENDMENTS.—The amendments made by subsection (b) and paragraphs (1) and (2) of subsection (c) shall take effect 180 days after the date of the enactment of this Act and shall apply with respect to offenses committed under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), on or after that effective date.

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H.R. 3304 §1703 [\[Table of Contents\]](#)

SUMMARY

- This section amends Art. 43 to remove the statute of limitations for sexual assault (Art 120(b)) and sexual assault of a child (120b(b)).

Implementation Timeline

- Immediate Implementation

TEXT

ELIMINATION OF FIVE-YEAR STATUTE OF LIMITATIONS ON TRIAL BY COURT-MARTIAL FOR ADDITIONAL OFFENSES INVOLVING SEX-RELATED CRIMES.

(a) INCLUSION OF ADDITIONAL OFFENSES.—Section 843(a) of title 10, United States Code (article 43(a) of the Uniform Code of Military Justice), is amended by striking “rape, or rape of a child” and inserting “rape or sexual assault, or rape or sexual assault of a child”.

(b) CONFORMING AMENDMENT.—Section 843(b)(2)(B)(i) of title 10, United States Code (article 43(b)(2)(B)(i) of the Uniform Code of Military Justice), is amended by inserting before the period at the end the following: “, unless the offense is covered by subsection (a)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply with respect to an offense covered by section 920(b) or 920b(b) of title 10, United States Code (article 120(b) or 120b(b) of the Uniform Code of Military Justice), that is committed on or after that date.

FY14 NDAA SUMMARY

H.R. 3304 §1704 [\[Table of Contents\]](#)

SUMMARY

- This section amends Art 46 to require defense counsel to make requests to interview sexual assault victims through trial counsel; and at the request of victim, requires that either trial counsel, victim’s counsel, or victim advocate be present during the defense interview.
 - This requirement is to be enforced for any victim of a violation of Arts. 120, 120a, 120b, 120c, 125, or attempts thereof.

Implementation Timeline

- Immediate Implementation.

TEXT

DEFENSE COUNSEL INTERVIEW OF VICTIM OF AN ALLEGED SEX-RELATED OFFENSE IN PRESENCE OF TRIAL COUNSEL, COUNSEL FOR THE VICTIM, OR A SEXUAL ASSAULT VICTIM ADVOCATE.

Section 846 of title 10, United States Code (article 46 of the Uniform Code of Military Justice), is amended—

(1) by inserting “(a) OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE.—” before “The trial counsel”;

(2) by striking “Process issued” and inserting the following:

“(c) PROCESS.—Process issued”; and

(3) by inserting after subsection (a), as designated by paragraph (1), the following new subsection (b):

“(b) DEFENSE COUNSEL INTERVIEW OF VICTIM OF ALLEGED SEX-RELATED OFFENSE.—(1) Upon notice by trial counsel to defense counsel of the name of an alleged victim of an alleged sex-related offense who trial counsel intends to call to testify at a preliminary hearing under section 832 of this title (article 32) or a court-martial under this chapter, defense counsel shall make any request to interview the victim through trial counsel.

“(2) If requested by an alleged victim of an alleged sex-related offense who is subject to a request for interview under paragraph (1), any interview of the victim by defense counsel shall take place only in the presence of trial counsel, a counsel for the victim, or a Sexual Assault Victim Advocate.

“(3) In this subsection, the term ‘alleged sex-related offense’ means any allegation of—

“(A) a violation of section 920, 920a, 920b, 920c, or 925 of this title (article 120, 120a, 120b, 120c, or 125); or

“(B) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80).”.

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H.R. 3304 §1705 [\[Table of Contents\]](#)

SUMMARY

- This section makes two major changes to courts-martial involving rape or sexual assault (under Art. 120), rape or sexual assault of a child (under Art. 120b), forcible sodomy (under Art. 125), or attempts thereof (under Art. 80)
 1. If one of these offenses is charged, the only forum with jurisdiction over the offense is a general court-martial.
 2. For anyone convicted of one of these offenses the adjudged punishment must include a dismissal or dishonorable discharge.

Implementation Timeline

- 180 Day Implementation (24 June 2014)

TEXT

DISCHARGE OR DISMISSAL FOR CERTAIN SEX-RELATED OFFENSES AND TRIAL OF SUCH OFFENSES BY GENERAL COURTS-MARTIAL.

(a) MANDATORY DISCHARGE OR DISMISSAL REQUIRED.—

(1) IMPOSITION.—Section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), is amended—

(A) by inserting “(a)” before “The punishment”;

(B) by adding at the end the following new subsection:

“(b)(1) While a person subject to this chapter who is found guilty of an offense specified in paragraph (2) shall be punished as a general court-martial may direct, such punishment must include, at a minimum, dismissal or dishonorable discharge, except as provided for in section 860 of this title (article 60).

“(2) Paragraph (1) applies to the following offenses:

“(A) An offense in violation of subsection (a) or (b) of section 920 of this title (article 120(a) or (b)).

“(B) Rape and sexual assault of a child under subsection (a) or (b) of section 920b of this title (article 120b).

“(C) Forcible sodomy under section 925 of this title (article 125).

“(D) An attempt to commit an offense specified in subparagraph (A), (B), or (C) that is punishable under section 880 of this title (article 80).”.

(2) CLERICAL AMENDMENTS.—

(A) SECTION HEADING.—The heading of such section is amended to read as follows:

“§ 856. Art. 56. Maximum and minimum limits”.

(B) TABLE OF SECTIONS.—The table of sections at the beginning of subchapter VIII of chapter 47 of such title is amended by striking the item relating to section 856 and inserting the following new item:

“856. Art 56. Maximum and minimum limits.”.

(b) JURISDICTION LIMITED TO GENERAL COURTS-MARTIAL.—Section 818 of title 10, United States Code (article 18 of the Uniform Code of Military Justice), is amended—

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(1) by inserting “(a)” before the first sentence;

(2) in the third sentence, by striking “However, a general court-martial” and inserting the following:

“(b) A general court-martial”; and

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

“(c) Consistent with sections 819, 820, and 856(b) of this title (articles 19, 20, and 56(b)), only general courts-martial have jurisdiction over an offense specified in section 856(b)(2) of this title (article 56(b)(2)).”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act, and apply to offenses specified in section 856(b)(2) of title 10, United States Code (article 56(b)(2) of the Uniform Code of Military Justice), as added by subsection (a)(1), committed on or after that date.

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H.R. 3304 §1706 [[Table of Contents](#)]

SUMMARY

- This section creates a specific clemency submission right for all crime victims
 - In any case in which findings and sentence have been adjudged for an offense that involved a victim, the victim shall be provided an opportunity to submit matters for consideration by the convening authority.
 - Victim shall submit matters within 10 days of the later of receipt of the authenticated ROT and SJAR (with a good cause extension for up to 20 days).
 - The convening authority shall not consider any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.

Implementation Timeline

- 180 Day Implementation (24 June 2014) [this section amends Article 60, as amended by Sec. 1702, which has a 180 day implementation date]

TEXT

PARTICIPATION BY VICTIM IN CLEMENCY PHASE OF COURTS-MARTIAL PROCESS.

(a) VICTIM SUBMISSION OF MATTERS FOR CONSIDERATION BY CONVENING AUTHORITY.—Section 860 of title 10, United States Code (article 60 of the Uniform Code of Military Justice), as amended by section 1702, is further amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection:

“(d)(1) In any case in which findings and sentence have been adjudged for an offense that involved a victim, the victim shall be provided an opportunity to submit matters for consideration by the convening authority or by another person authorized to act under this section before the convening authority or such other person takes action under this section.

“(2)(A) Except as provided in subparagraph (B), the submission of matters under paragraph (1) shall be made within 10 days after the later of—

“(i) the date on which the victim has been given an authenticated record of trial in accordance with section 854(e) of this title (article 54(e)); and

“(ii) if applicable, the date on which the victim has been given the recommendation of the staff judge advocate or legal officer under subsection (e).

“(B) In the case of a summary court-martial, the submission of matters under paragraph (1) shall be made within seven days after the date on which the sentence is announced.

“(3) If a victim shows that additional time is required for submission of matters under paragraph (1), the convening authority or other person taking action under this section, for good cause, may extend the submission period under paragraph (2) for not more than an additional 20 days.

“(4) A victim may waive the right under this subsection to make a submission to the convening authority or other person taking action under this section. Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which a

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victim may make a submission under this subsection shall be deemed to have expired upon the submission of such waiver to the convening authority or such other person.

“(5) In this section, the term ‘victim’ means a person who has suffered a direct physical, emotional, or pecuniary loss as a result of a commission of an offense under this chapter (the Uniform Code of Military Justice) and on which the convening authority or other person authorized to take action under this section is taking action under this section.”

(b) LIMITATIONS ON CONSIDERATION OF VICTIM’S CHARACTER.— Subsection (b) of section 860 of title 10, United States Code (article 60 of the Uniform Code of Military Justice), is amended by adding at the end the following new paragraph:

“(5) The convening authority or other person taking action under this section shall not consider under this section any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial.”

(c) CONFORMING AMENDMENT.—Subsection (b)(1) of section 860 of title 10, United States Code (article 60 of the Uniform Code of Military Justice), is amended by striking “subsection (d)” and inserting “subsection (e)”.

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H.R. 3304 §1707 [\[Table of Contents\]](#)

SUMMARY

- This section decriminalizes consensual sodomy.

Implementation Timeline

- Immediate Implementation.

TEXT

REPEAL OF THE OFFENSE OF CONSENSUAL SODOMY UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) RESTATEMENT OF ARTICLE 125 WITH CONSENSUAL SODOMY OMITTED.—Section 925 of title 10, United States Code (article 125 of the Uniform Code of Military Justice), is amended to read as follows:

“§ 925. Art 125. Forcible sodomy; bestiality

“(a) FORCIBLE SODOMY.—Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex by force or without the consent of the other person is guilty of forcible sodomy and shall be punished as a court-martial may direct.

“(b) BESTIALITY.—Any person subject to this chapter who engages in unnatural carnal copulation with an animal is guilty of bestiality and shall be punished as a court-martial may direct.

“(c) SCOPE OF OFFENSES.—Penetration, however slight, is sufficient to complete an offense under subsection (a) or (b).”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by striking the item relating to section 925 (article 125) and inserting the following new item: “925. Art 125. Forcible sodomy; bestiality.”.

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H.R. 3304 §1708 [\[Table of Contents\]](#)

SUMMARY

- “[T]he character and military service of the accused” in the discussion following RCM 306(b) shall be deleted.

Implementation Timeline

- 180 Day Implementation (24 June 2014)

TEXT

MODIFICATION OF MANUAL FOR COURTS-MARTIAL TO ELIMINATE FACTOR RELATING TO CHARACTER AND MILITARY SERVICE OF THE ACCUSED IN RULE ON INITIAL DISPOSITION OF OFFENSES.

Not later than 180 days after the date of the enactment of this Act, the discussion pertaining to Rule 306 of the Manual for Courts-Martial (relating to policy on initial disposition of offenses) shall be amended to strike the character and military service of the accused from the matters a commander should consider in deciding how to dispose of an offense.

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H.R. 3304 §1709 [\[Table of Contents\]](#)

SUMMARY

- The Services are directed to prescribe regulations prohibiting retaliation against any victim or other member of the armed forces who reports a criminal offense. The regulation shall state that any such retaliation is punishable under Art. 92.

Implementation Timeline

- 120 Day Implementation (25 April 2014)

TEXT

PROHIBITION OF RETALIATION AGAINST MEMBERS OF THE ARMED FORCES FOR REPORTING A CRIMINAL OFFENSE.

(a) REGULATIONS ON PROHIBITION OF RETALIATION.—

(1) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations, or require the Secretaries of the military departments to prescribe regulations, that prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense. The regulations shall prescribe that a violation of the regulations is an offense punishable under section 892 of title 10, United States Code (article 92 of the Uniform Code of Military Justice).

(2) DEADLINE.—The regulations required by this subsection shall be prescribed not later than 120 days after the date of the enactment of this Act.

(b) RETALIATION AND PERSONNEL ACTION DESCRIBED.—

(1) RETALIATION.—For purposes of the regulations required by subsection (a), the Secretary of Defense shall define retaliation to include, at a minimum—

(A) taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense; and

(B) ostracism and such of acts of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense.

(2) PERSONNEL ACTIONS.—For purposes of paragraph (1)(A), the Secretary of Defense shall define the personnel actions to be covered by the regulations.

(c) REPORT ON SEPARATE PUNITIVE ARTICLE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the recommendations of the Secretary regarding whether chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), should be amended to add a new punitive article to subchapter X of such chapter to prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense.

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H.R. 3304 §1711 [[Table of Contents](#)]

SUMMARY

- Prohibition on commissioning or enlisting a person who has been convicted under federal or state law of rape, sexual assault, forcible sodomy, incest, or attempts to commit these offenses.

Implementation Timeline

- Immediate Implementation.

TEXT

PROHIBITION ON SERVICE IN THE ARMED FORCES BY INDIVIDUALS WHO HAVE BEEN CONVICTED OF CERTAIN SEXUAL OFFENSES.

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 37 of title 10, United States Code, is amended adding at the end the following new section:

“§ 657. Prohibition on service in the armed forces by individuals convicted of certain sexual offenses

“(a) PROHIBITION ON COMMISSIONING OR ENLISTMENT.—A person who has been convicted of an offense specified in subsection (b) under Federal or State law may not be processed for commissioning or permitted to enlist in the armed forces.

“(b) COVERED OFFENSES.—An offense specified in this subsection is any felony offense as follows:

“(1) Rape or sexual assault.

“(2) Forcible sodomy.

“(3) Incest.

“(4) An attempt to commit an offense specified in paragraph (1) through (3), as punishable under applicable Federal or State law.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 of such title is amended by adding at the end the following new item:

“657. Prohibition on service in the armed forces by individuals convicted of certain sexual offenses.”

(b) REPEAL OF SUPERSEDED PROHIBITION.—Section 523 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1723; 10 U.S.C. 504 note) is repealed.

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H.R. 3304 §1712 [[Table of Contents](#)]

SUMMARY

- Extends mandate to make expedited transfer for victims available to the Coast Guard.

Implementation Timeline

- Immediate Implementation.

TEXT

ISSUANCE OF REGULATIONS APPLICABLE TO THE COAST GUARD REGARDING CONSIDERATION OF REQUEST FOR PERMANENT CHANGE OF STATION OR UNIT TRANSFER BY VICTIM OF SEXUAL ASSAULT.

Section 673(b) of title 10, United States Code, is amended by striking “The Secretaries of the military departments” and inserting “The Secretary concerned”.

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H.R. 3304 §1713 [\[Table of Contents\]](#)

SUMMARY

- SecDef may provide guidance for commanders regarding their authority to reassign members alleged to have committed offenses under Arts. 120, 120a, 120b, 120c, 125, and attempts thereof.
- On 14 Aug 13, the SecDef directed that the services implement a similar policy allowing administrative reassignment or transfer of alleged offenders of sexual assault by 1 January 14.
 - A MARADMIN will implement the SecDef task.

Implementation Timeline

- Immediate Implementation.

TEXT

TEMPORARY ADMINISTRATIVE REASSIGNMENT OR REMOVAL OF A MEMBER OF THE ARMED FORCES ON ACTIVE DUTY WHO IS ACCUSED OF COMMITTING A SEXUAL ASSAULT OR RELATED OFFENSE.

(a) IN GENERAL.—Chapter 39 of title 10, United States Code, is amended by inserting after section 673 the following new section:

“§ 674. Temporary administrative reassignment or removal of a member on active duty accused of committing a sexual assault or related offense

“(a) GUIDANCE FOR TIMELY CONSIDERATION AND ACTION.—The Secretary concerned may provide guidance, within guidelines provided by the Secretary of Defense, for commanders regarding their authority to make a timely determination, and to take action, regarding whether a member of the armed forces serving on active duty who is alleged to have committed an offense under 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 an attempt to commit such an offense as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice) should be temporarily reassigned or removed from a position of authority or from an assignment, not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the member’s unit.

“(b) TIME FOR DETERMINATION.—A determination described in subsection (a) may be made at any time after receipt of notification of an unrestricted report of a sexual assault or other sex-related offense that identifies the member as an alleged perpetrator.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 39 of such title is amended by inserting after the item relating to section 673 the following new item: “674. Temporary administrative reassignment or removal of a member on active duty accused of committing a sexual assault or related offense.”.

(c) ADDITIONAL TRAINING REQUIREMENT FOR COMMANDERS.—The Secretary of Defense shall provide for the inclusion of information and discussion regarding the availability and use of the authority described by section 674 of title 10, United States Code, as added by subsection (a), as part of the training for new and prospective commanders at all

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levels of command required by section 585(b) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 1561 note).

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H.R. 3304 §1714 [\[Table of Contents\]](#)

SUMMARY

Changes provisions of 10 U.S.C. § 1034 – Protected communications; prohibition of retaliatory personnel actions.

- Expands unfavorable personnel actions to include making or threatening to make a significant change in the duties or responsibilities of a member not commensurate with the member's grade.
- Expands the class of covered communications to include when a member is perceived as making or preparing a communication to one of the covered personnel or agencies, including those made in a court-martial.
 - No person may take or threaten to take an unfavorable personnel action as a reprisal against a member of the Armed Forces for making or preparing or being perceived as making or preparing a communication to a Member of Congress, an IG, a member of a DoD inspection, investigation, or law enforcement organization, any person in the chain of command, or a court-martial.
 - Protected communications include those made to a person the member reasonably believed to be covered, even if the communication revealed information that had previously been disclosed, regardless of the member's motive for making the communication, regardless of whether the communication was in writing or not, regardless of whether the communication was made while the member was on or off duty.
- Increases the time period a member has to make an allegation from when they learned of the personnel action from 60 days to 1 year.
- IG conducting the investigation must be outside the chain of command of the member submitting the allegation and individual alleged to have taken the retaliatory action and one organization higher in the chain of command than the organization of the member submitting the allegation and the individual alleged to have taken the retaliatory action.
- Requires the service Secretary to determine if a prohibited personnel action has occurred, order action necessary to correct the member's record, and take appropriate disciplinary action.
 - If the Secretary determines that an order for corrective or disciplinary action is not appropriate, he or she shall provide to SecDef and the member a notice of the determination and the reasons for not taking action and when appropriate refer the report to the BCNR for further review.
- Requires BCNR to hold a hearing when a member submits an application under this provision (currently optional).
- Changes threshold by which SJA to CMC must make legal assistance available to members before BCNR under this section from cases that are "unusually complex" to whether the member would "benefit" from legal assistance.

Implementation Timeline

- Immediate Implementation.

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TEXT

EXPANSION AND ENHANCEMENT OF AUTHORITIES RELATING TO PROTECTED COMMUNICATIONS OF MEMBERS OF THE ARMED FORCES AND PROHIBITED RETALIATORY ACTIONS.

(a) EXPANSION OF PROHIBITED RETALIATORY PERSONNEL ACTIONS.—

Subsection (b) of section 1034 of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “preparing—” and inserting “preparing or being perceived as making or preparing—”;

(B) in subparagraph (A), by striking “or” at the end;

(C) in subparagraph (B)—

(i) in clause (iv), by striking “or” at the end;

(ii) by redesignating clause (v) as clause (vi) and, in such clause, by striking the period at the end and inserting “; or”; and

(iii) by inserting after clause (iv) the following new clause (v):

“(v) a court-martial proceeding; or”; and

(D) by adding at the end the following new subparagraph:

“(C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.”; and

(2) in paragraph (2)—

(A) by striking “and” after “unfavorable action” and inserting a comma; and

(B) by inserting after “any favorable action” the following: “, or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member’s grade”.

(b) INSPECTOR GENERAL INVESTIGATIONS OF ALLEGATIONS.—

Subsection (c) of section 1034 of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “paragraph (3)” and inserting “paragraph (4)”;

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively;

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

“(3) A communication described in paragraph (2) shall not be excluded from the protections provided in this section because—

“(A) the communication was made to a person who participated in an activity that the member reasonably believed to be covered by paragraph (2);

“(B) the communication revealed information that had previously been disclosed;

“(C) of the member’s motive for making the communication;

“(D) the communication was not made in writing;

“(E) the communication was made while the member was off duty; and

“(F) the communication was made during the normal course of duties of the member.”;

(4) in paragraph (5), as redesignated by paragraph (2) of this subsection—

(A) by striking “paragraph (3)(A)” and inserting “paragraph (4)(A)”;

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(B) by striking “paragraph (3)(D)” and inserting “paragraph (4)(D)”;
and

(C) by striking “60 days” and inserting “one year”; and

(5) in paragraph (6), as redesignated by paragraph (2) of this subsection, by striking “outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.” and inserting the following: “one or both of the following:

“(A) Outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

“(B) At least one organization higher in the chain of command than the organization of the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.”

(c) INSPECTOR GENERAL INVESTIGATIONS OF UNDERLYING

ALLEGATIONS.—Subsection (d) of section 1034 of title 10, United States Code, is amended by striking “subparagraph (A) or (B) of subsection (c)(2)” and inserting “subparagraph (A), (B), or (C) of subsection (c)(2)”.

(d) REPORTS ON INVESTIGATIONS.—Subsection (e) of section 1034 of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “subsection (c)(3)(E)” both places it appears and inserting “subsection (c)(4)(E)”;

(B) by inserting “and the Secretary of the military department concerned” after “the Secretary of Defense”; and

(C) by striking “transmitted to the Secretary” and inserting “transmitted to such Secretaries”; and

(2) in paragraph (3), by inserting “and the Secretary of the military department concerned” after “the Secretary of Defense”.

(e) ACTION IN CASE OF VIOLATIONS.—Section 1034 of title 10, United States Code, is further amended—

(1) by redesignating subsections (f), (g), (h), and (i) as subsections (g), (h), (i), and (j), respectively; and

(2) by inserting after subsection (e) the following new subsection (f):

“(f) ACTION IN CASE OF VIOLATIONS.—(1) Not later than 30 days after receiving a report from the Inspector General under subsection (e), the Secretary of Homeland Security or the Secretary of the military department concerned, as applicable, shall determine whether there is sufficient basis to conclude whether a personnel action prohibited by subsection (b) has occurred.

“(2) If the Secretary concerned determines under paragraph (1) that a personnel action prohibited by subsection (b) has occurred, the Secretary shall—

“(A) order such action as is necessary to correct the record of a personnel action prohibited by subsection (b); and

“(B) take any appropriate disciplinary action against the individual who committed such prohibited personnel action.

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“(3) If the Secretary concerned determines under paragraph (1) that an order for corrective or disciplinary action is not appropriate, not later than 30 days after making the determination, such Secretary shall—

“(A) provide to the Secretary of Defense and the member or former member a notice of the determination and the reasons for not taking action; and

“(B) when appropriate, refer the report to the appropriate board for the correction of military records for further review under subsection (g).”.

(f) CORRECTION OF RECORDS.—Subsection (g) of section 1034 of title 10, United States Code, as redesignated by subsection (e)(1) of this section, is amended in paragraph (3)—

(1) in the matter preceding subparagraph (A), by striking “board elects to hold” and inserting “board holds”; and

(2) in subparagraph (A)(ii), by striking “the case is unusually complex or otherwise requires” and inserting “the member or former member would benefit from”.

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H.R. 3304 §1715 [[Table of Contents](#)]

SUMMARY

- Expands investigations IG must investigate to include retaliatory actions made against members whose communications were made to personnel or agencies under 10 U.S.C. §1034 with regard to rape, sexual assault, or other sexual misconduct under Arts. 120, 120a, 120b, and 120c, and sexual harassment.

Implementation Timeline

- Immediate Implementation.

TEXT

INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF RETALIATORY PERSONNEL ACTIONS TAKEN IN RESPONSE TO MAKING PROTECTED COMMUNICATIONS REGARDING SEXUAL ASSAULT.

Section 1034(c)(2)(A) of title 10, United States Code, is amended by striking “sexual harassment or” and inserting “rape, sexual assault, or other sexual misconduct in violation of sections 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice), sexual harassment, or”.

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H.R. 3304 §1716 [\[Table of Contents\]](#)

SUMMARY

- Adds new 10 U.S.C. §1044e. Special Victims' Counsel for victims of sex-related offenses.
 - VLCO should already cover victims of Arts. 120a, 120b, and 120c offenses. Eligibility remains tied to 10 U.S.C. §1044 eligibility for legal assistance.
- Types of legal assistance authorized:
 - Legal consultation regarding collateral misconduct and victim's right to seek DC.
 - Legal consultation regarding VWAP.
 - Legal consultation regarding responsibilities and support provided by SARC and VA, including MRE 514.
 - Legal consultation regarding potential for civil litigation against parties other than DoD.
 - Legal consultation regarding the military justice system.
 - Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the offense.
 - Legal consultation regarding eligibility and requirements for services available for medical and mental health services.
 - Legal consultation and assistance in personal civil legal matters, any proceedings of the military justice process in which a victim can participate as a witness or other party, in MPOs and CPOs, in understanding and obtaining any military and veteran benefits, such as transitional compensation.
 - Other legal assistance as SecDef authorizes.
- Nature of relationship between VLC and victim is attorney-client.
- Qualifications:
 - Legal assistance attorney under 10 U.S.C. § 1044(d)(2)
 - Certified as competent to be VLC by SJA to CMC.
- Availability of VLC:
 - Individual is eligible for legal assistance under 10 U.S.C. § 1044.
 - Must be offered option of VLC upon report to SARC, VA, MCIO, VWAP, TC, or healthcare personnel.
 - Victims who make either an unrestricted or restricted report are eligible.
 - Covers victims who allege offenses under Arts. 120, 120a, 120b, 120c, 125, and attempts thereof under Art. 80.
- In-depth and advanced training for all military and civilian attorneys providing legal assistance under section 1044 or 1044e to support victims of sex-related offenses.

Implementation Timeline

- 180 Day Implementation (24 June 2014)

TEXT

DESIGNATION AND AVAILABILITY OF SPECIAL VICTIMS' COUNSEL FOR VICTIMS OF SEX-RELATED OFFENSES.

(a) DESIGNATION AND DUTIES.—

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(1) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by inserting after section 1044d the following new section:

“§ 1044e. Special Victims’ Counsel for victims of sex-related offenses

“(a) DESIGNATION; PURPOSES.—The Secretary concerned shall designate legal counsel (to be known as ‘Special Victims’ Counsel’) for the purpose of providing legal assistance to an individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

“(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 Department of Defense).

“(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) Accompanying 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;

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“(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) 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.—An individual may not be designated as a Special Victims’ Counsel under this section unless the individual—

“(1) meets the qualifications specified in section 1044(d)(2) of this title; and

“(2) 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.

“(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, 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.

“(f) AVAILABILITY OF SPECIAL VICTIMS’ COUNSEL.—(1) An individual eligible for military legal assistance under section 1044 of this title 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) The assistance of a Special Victims’ Counsel under this subsection shall be available to an individual eligible for military legal assistance under section 1044 of this title 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

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“(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.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1044d the following new item:

“1044e. Special Victims’ Counsel for victims of sex-related offenses.”.

(3) CONFORMING AMENDMENTS.—

(A) QUALIFICATIONS OF PERSONS PROVIDING LEGAL ASSISTANCE.—Section 1044(d)(2) of such title is amended by inserting before the period at the end the following: “and, for purposes of service as a Special Victims’ Counsel under section 1044e of this title, meets the additional qualifications specified in subsection (d)(2) of such section.”.

(B) INCLUSION IN DEFINITION OF MILITARY LEGAL ASSISTANCE.—Section 1044(d)(3)(B) of such title is amended by striking “and 1044d” and inserting “1044d, 1044e, and 1565b(a)(1)(A)”.

(C) ACCESS TO LEGAL ASSISTANCE AND SERVICES.—Section 1565b(a)(1)(A) of such title is amended by striking “section 1044” and inserting “sections 1044 and 1044e”.

(4) IMPLEMENTATION.—Section 1044e of title 10, United States Code, as added by paragraph (1), shall be implemented within 180 days after the date of the enactment of this Act.

(b) ENHANCED TRAINING REQUIREMENT.—The Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall implement, consistent with the guidelines provided under section 1044e of title 10, United States Code, as added by subsection (a), in-depth and advanced training for all military and civilian attorneys providing legal assistance under section 1044 or 1044e of such title to support victims of alleged sex-related offenses.

(c) SECRETARY OF DEFENSE IMPLEMENTATION REPORT.—

(1) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of Homeland Security with respect to the Coast Guard, shall submit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on Armed Services and Transportation and Infrastructure of the House of Representatives a report describing how the Armed Forces will implement the requirements of section 1044e of title 10, United States Code, as added by subsection (a).

(2) ADDITIONAL SUBMISSION REQUIREMENT.—The report required by paragraph (1) shall also be submitted to the independent review panel established by the Secretary of Defense under section 576(a)(1) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758) and to the Joint Services Committee on Military Justice.

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H.R. 3304 §1721 [\[Table of Contents\]](#)

SUMMARY

- Requires SecDef to direct the Secretary to verify and track the compliance of commanders in conducting organizational climate assessments, which are required within 120 days of the commander assuming command and annually thereafter under the FY13 NDAA.

Implementation Timeline

- Immediate Implementation

TEXT

TRACKING OF COMPLIANCE OF COMMANDING OFFICERS IN CONDUCTING ORGANIZATIONAL CLIMATE ASSESSMENTS FOR PURPOSES OF PREVENTING AND RESPONDING TO SEXUAL ASSAULTS.

Section 572 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1753; 10 U.S.C. 1561 note) is amended by adding at the end the following new subsection:

“(d) TRACKING OF ORGANIZATIONAL CLIMATE ASSESSMENT COMPLIANCE.—The Secretary of Defense shall direct the Secretaries of the military departments to verify and track the compliance of commanding officers in conducting organizational climate assessments, as required by subsection (a)(3).”.

FY14 NDAA SUMMARY

H.R. 3304 §1722 [[Table of Contents](#)]

SUMMARY

- Advances the deadline the RSP has to submit its report from 18 months to 12 months. SecDef requested the 12 month deadline earlier this year, which will result in the report being published in Summer 2014.

Implementation Timeline

- Immediate implementation of change to RSP timeline.
- Report due either 12 June 2014 (First meeting between Chair and GC) or 27 June 2014 (first public hearing).

TEXT

ADVANCEMENT OF SUBMITTAL DEADLINE FOR REPORT OF INDEPENDENT PANEL ON ASSESSMENT OF MILITARY RESPONSE SYSTEMS TO SEXUAL ASSAULT.

Section 576(c)(1)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1759) is amended by striking “Eighteen months” and inserting “Twelve months”.

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H.R. 3304 §1723 [\[Table of Contents\]](#)

SUMMARY

- Under the FY13 NDAA a member who filed a Restricted Report had to request that the DD Form 2910 and DD Form 2911 be retained for 50 years. This provision will mandate 50 year retention of these forms regardless of whether the victim requests retention or not. Under current DoD policy, the DD Form 2910 is automatically retained for 50 years in Unrestricted Reports and the DD Form 2910 and 2911 is automatically maintained for 5 years in Restricted Reports.

Implementation Timeline

- Immediate Implementation.

TEXT

RETENTION OF CERTAIN FORMS IN CONNECTION WITH RESTRICTED REPORTS AND UNRESTRICTED REPORTS ON SEXUAL ASSAULT INVOLVING MEMBERS OF THE ARMED FORCES.

(a) REQUIREMENT FOR RETENTION.—Subsection (a) of section 577 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1762; 10 U.S.C. 1561 note) is amended—

(1) by striking “At the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault involving the member, the Secretary of Defense shall” and inserting “The Secretary of Defense shall”; and

(2) by striking “the Restricted Report” and inserting “a Restricted Report or Unrestricted Report on an incident of sexual assault involving a member of the Armed Forces”.

(b) CONFORMING AMENDMENT.—The heading of such section is amended to read as follows:

“SEC. 577. RETENTION OF CERTAIN FORMS IN CONNECTION WITH RESTRICTED REPORTS AND UNRESTRICTED REPORTS ON SEXUAL ASSAULT INVOLVING MEMBERS OF THE ARMED FORCES.”.

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H.R. 3304 §1724 [\[Table of Contents\]](#)

SUMMARY

- Requires “timely access” to a SARC by a member of the National Guard or Reserves who is the victim of a sexual assault during the performance of duties or the victim of a sexual assault committed by a member of the National Guard or Reserves.

Implementation Timeline

- Immediate Implementation

TEXT

TIMELY ACCESS TO SEXUAL ASSAULT RESPONSE COORDINATORS BY MEMBERS OF THE NATIONAL GUARD AND RESERVES.

Section 584(a) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1433; 10 U.S.C. 1561 note) is amended—

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

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

“(2) AVAILABILITY FOR RESERVE COMPONENT MEMBERS.—

The Secretary of the military department concerned shall ensure the timely access to a Sexual Assault Response Coordinator by any member of the National Guard or Reserve who—

“(A) is the victim of a sexual assault during the performance of duties as a member of the National Guard or Reserves; or

“(B) is the victim of a sexual assault committed by a member of the National Guard or Reserves.”.

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H.R. 3304 §1725 [[Table of Contents](#)]

SUMMARY

- Expands SecDef requirement to establish minimum standards to include the positions of SAPR Program Manager and SANE as well as VAs who serve only on a part-time basis.
- Requires the assignment of a SANE to all MTFs with 24 hr/day emergency departments and for a SANE to be available to a patient of all other MTFs.
- SecDef shall prepare a report on that adequacy of the training, qualifications, and experience of personnel assigned to a position that includes sexual assault prevention and response.

Implementation Timeline

- 120 Day Implementation (25 April 2014)

TEXT

QUALIFICATIONS AND SELECTION OF DEPARTMENT OF DEFENSE SEXUAL ASSAULT PREVENTION AND RESPONSE PERSONNEL AND REQUIRED AVAILABILITY OF SEXUAL ASSAULT NURSE EXAMINERS.

(a) QUALIFICATIONS FOR ASSIGNMENT.—Section 1602(e)(2) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note; 124 Stat. 4431) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following new subparagraphs:

“(A) the qualifications necessary for a member of the Armed Forces or a civilian employee of the Department of Defense to be selected for assignment to duty as a Sexual Assault Response and Prevention Program Manager, Sexual Assault Response Coordinator, or Sexual Assault Victim Advocate, whether assigned to such duty on a full-time or part-time basis;

“(B) consistent with section 584(c) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note; 125 Stat. 1433), the training, certification, and status of members of the Armed Forces and civilian employees of the department assigned to duty as Sexual Assault Response and Prevention Program Managers, Sexual Assault Response Coordinators, and Sexual Assault Victim Advocates for the Armed Forces; and”.

(b) AVAILABILITY OF SEXUAL ASSAULT NURSE EXAMINERS AT MILITARY MEDICAL TREATMENT FACILITIES.—

(1) FACILITIES WITH FULL-TIME EMERGENCY DEPARTMENT.— The Secretary of a military department shall require the assignment of at least one full-time sexual assault nurse examiner to each military medical treatment facility under the jurisdiction of that Secretary in which an emergency department operates 24 hours per day. The Secretary may assign additional sexual assault nurse examiners based on the demographics of the patients who utilize the military medical treatment facility.

(2) OTHER FACILITIES.—In the case of a military medical treatment facility not covered by paragraph (1), the Secretary of the military department concerned shall require that a sexual assault nurse examiner be made available to a patient of the facility,

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consistent with the Department of Justice National Protocol for Sexual Assault Medical Forensic Examinations, Adult/Adolescent, when a determination is made regarding the patient's need for the services of a sexual assault nurse examiner.

(3) QUALIFICATIONS.—A sexual assault nurse examiner assigned under paragraph (1) or made available under paragraph (2) shall meet such training and certification requirements as are prescribed by the Secretary of Defense.

(c) REPORT ON TRAINING, QUALIFICATIONS, AND EXPERIENCE OF SEXUAL ASSAULT PREVENTION AND RESPONSE PERSONNEL.—

(1) REPORT REQUIRED.—The Secretary shall prepare a report on the review, conducted pursuant to the Secretary of Defense Memorandum of May 17, 2013, of the adequacy of the training, qualifications, and experience of each member of the Armed Forces and civilian employee of the Department of Defense who is assigned to a position that includes responsibility for sexual assault prevention and response within the Armed Forces for the successful discharge of such responsibility.

(2) REPORT ELEMENTS.—The report shall include the following:

(A) An assessment of the adequacy of the training and certifications required for members and employees described in paragraph (1).

(B) The number of such members and employees who did not have the training, qualifications, or experience required to successfully discharge their responsibility for sexual assault prevention and response within the Armed Forces.

(C) The actions taken by the Secretary of Defense with respect to such members and employees who were found to lack the training, qualifications, or experience to successfully discharge such responsibility.

(D) Such improvements as the Secretary considers appropriate in the process used to select and assign members and employees to positions that include responsibility for sexual assault prevention and response within the Armed Forces in order to ensure the highest caliber candidates are selected and assigned to such positions.

(3) SUBMISSION.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit the report to the Committees on Armed Services of the Senate and the House of Representatives.

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H.R. 3304 §1726 [\[Table of Contents\]](#)

SUMMARY

- Additional duties for DoD SAPRO.
- DoD SAPRO shall develop metrics to measure the effectiveness of, and compliance with, training and awareness objectives of the services on sexual assault prevention and response and collect and maintain such data.
- DoD SAPRO shall act as a liaison between DoD and federal and state agencies on programs and efforts related to sexual assault prevention and response.
- Oversee development of strategic program guidance and joint planning objectives for resources in support of the SAPR program, and make recommendations on modifications to policy, law, and regulations needed to ensure the continuing availability of such resources.

Implementation Timeline

- Immediate Implementation

TEXT

ADDITIONAL RESPONSIBILITIES OF SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE FOR DEPARTMENT OF DEFENSE SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM.

(a) ADDITIONAL DIRECTOR DUTIES.—Subsection (b) of section 1611 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 1561 note) is amended—

(1) by striking “and” at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting a semicolon;

and

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

“(4) collect and maintain data of the military departments on sexual assault in accordance with subsection (e);

“(5) act as liaison between the Department of Defense and other Federal and State agencies on programs and efforts relating to sexual assault prevention and response; and

“(6) oversee development of strategic program guidance and joint planning objectives for resources in support of the sexual assault prevention and response program, and make recommendations on modifications to policy, law, and regulations needed to ensure the continuing availability of such resources.”.

(b) COLLECTION AND MAINTENANCE OF DATA.—Such section is further amended by adding at the end the following new subsection:

“(e) DATA COLLECTION AND MAINTENANCE METRICS.—In carrying out the requirements of subsection (b)(4), the Director of the Sexual Assault Prevention and Response Office shall develop metrics to measure the effectiveness of, and compliance with, training and awareness objectives of the military departments on sexual assault prevention and response.”.

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H.R. 3304 §1731 [\[Table of Contents\]](#)

SUMMARY

- Additional assessments for the Response Systems Panel and Judicial Proceedings Panel.

Implementation Timeline

- Report due either 12 June 2014 (First meeting between Chair and GC) or 27 June 2014 (first public hearing)

TEXT

INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(a) ADDITIONAL DUTIES FOR RESPONSE SYSTEMS PANEL.—

(1) ADDITIONAL ASSESSMENTS SPECIFIED.—The independent panel established by the Secretary of Defense under subsection (a)(1) of section 576 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “response systems panel”, shall conduct the following:

(A) An assessment of the impact, if any, that removing from the chain of command any disposition authority regarding charges preferred under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), would have on overall reporting and prosecution of sexual assault cases.

(B) An assessment regarding whether the roles, responsibilities, and authorities of Special Victims’ Counsel to provide legal assistance under section 1044e of title 10, United States Code, as added by section 1716, to victims of alleged sex-related offenses should be expanded to include legal standing to represent the victim during investigative and military justice proceedings in connection with the prosecution of the offense.

(C) An assessment of the feasibility and appropriateness of extending to victims of crimes covered by chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), the right afforded a crime victim in civilian criminal legal proceedings under subsection (a)(4) of section 3771 of title 18, United States Code, and the legal standing to seek enforcement of crime victim rights provided by subsection (d) of such section.

(D) An assessment of the means by which the name, if known, and other necessary identifying information of an alleged offender that is collected as part of a restricted report of a sexual assault could be compiled into a protected, searchable database accessible only to military criminal investigators, Sexual Assault Response Coordinators, or other appropriate personnel only for the purposes of identifying individuals who are subjects of multiple accusations of sexual assault and encouraging victims to make an unrestricted report of sexual assault in those cases in order to facilitate increased prosecutions, particularly of serial offenders. The assessment should include an evaluation of the appropriate

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content to be included in the database, as well as the best means to maintain the privacy of those making a restricted report.

(E) As part of the comparison of military and civilian systems for the investigation, prosecution, and adjudication of adult sexual assault crimes, as required by subsection (d)(1)(B) of section 576 of the National Defense Authorization Act for Fiscal Year 2013, an assessment of the opportunities for clemency provided in the military and civilian systems, the appropriateness of clemency proceedings in the military system, the manner in which clemency is used in the military system, and whether clemency in the military justice system could be reserved until the end of the military appeals process.

(F) An assessment of whether the Department of Defense should promulgate, and ensure the understanding of and compliance with, a formal statement of what accountability, rights, and responsibilities a member of the Armed Forces has with regard to matters of sexual assault prevention and response, as a means of addressing those issues within the Armed Forces. If the response systems panel recommends such a formal statement, the response systems panel shall provide key elements or principles that should be included in the formal statement.

(2) SUBMISSION OF RESULTS.—The response systems panel shall include the results of the assessments required by paragraph (1) in the report required by subsection (c)(1) of section 576 of the National Defense Authorization Act for Fiscal Year 2013, as amended by section 1722.

(b) ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.—

(1) ADDITIONAL ASSESSMENTS SPECIFIED.—The independent panel established by the Secretary of Defense under subsection (a)(2) of section 576 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “judicial proceedings panel”, shall conduct the following:

(A) An assessment of the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), to expressly cover a situation in which a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.

(B) An assessment of the implementation and effect of section 1044e of title 10, United States Code, as added by section 1716, and make such recommendations for modification of such section 1044e as the judicial proceedings panel considers appropriate.

(C) An assessment of the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the Uniform Code of Military Justice), as added by section 1705, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

(D) An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code

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(the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

(i) Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.

(ii) Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the Uniform Code of Military Justice).

(iii) Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.

(2) SUBMISSION OF RESULTS.—The judicial proceedings panel shall include the results of the assessments required by paragraph (1) in one of the reports required by subsection (c)(2)(B) of section 576 of the National Defense Authorization Act for Fiscal Year 2013.

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H.R. 3304 §1732 [\[Table of Contents\]](#)

SUMMARY

- SecDef must review practices of MCIOs in response to an allegation that a military member has committed an offense under the UCMJ, including the extent to which the MCIOs make a recommendation regarding whether an allegation appears founded or unfounded. Develop uniform policy for the services regarding the use of case determinations to record the results of the investigation.

Implementation Timeline

- 180 Day Implementation (24 June 2014) – 180 Day Review Followed by Policy Implementation

TEXT

REVIEW AND POLICY REGARDING DEPARTMENT OF DEFENSE INVESTIGATIVE PRACTICES IN RESPONSE TO ALLEGATIONS OF UNIFORM CODE OF MILITARY JUSTICE VIOLATIONS.

(a) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall conduct a review of the practices of the military criminal investigative organizations (Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigation) in response to an allegation that a member of the Armed Forces has committed an offense under the Uniform Code of Military Justice, including the extent to which the military criminal investigative organizations make a recommendation regarding whether an allegation appears founded or unfounded.

(b) POLICY.—After conducting the review required by subsection (a), the Secretary of Defense shall develop a uniform policy for the Armed Forces, to the extent practicable, regarding the use of case determinations to record the results of the investigation of an alleged violation of the Uniform Code of Military Justice. In developing the policy, the Secretary shall consider the feasibility of adopting case determination methods, such as the uniform crime report, used by nonmilitary law enforcement agencies.

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H.R. 3304 §1733 [[Table of Contents](#)]

SUMMARY

- Report to SASC and HASC on review of training and education provided members of the Armed Forces on sexual assault prevention and response.

Implementation Timeline

- 120 Day Implementation (25 April 2014)

TEXT

REVIEW OF TRAINING AND EDUCATION PROVIDED MEMBERS OF THE ARMED FORCES ON SEXUAL ASSAULT PREVENTION AND RESPONSE.

(a) REVIEW REQUIRED.—The Secretary of Defense shall carry out a review of the adequacy of the training and education provided members of the Armed Forces on sexual assault prevention and response.

(b) RESPONSIVE ACTION.—Upon completion of the review, the Secretary of Defense shall—

(1) identify common core elements that must be included in any training or education provided members of the Armed Forces on sexual assault prevention and response; and

(2) recommend such other modifications of such training and education as the Secretary considers appropriate to address any inadequacies identified during the review.

(c) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of the review, including the common core elements identified in the review that will be included in any training or education provided members of the Armed Forces on sexual assault prevention and response.

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H.R. 3304 §1734 [\[Table of Contents\]](#)

SUMMARY

- Report on implementation of Department of Defense policy on the retention of and access to evidence and records relating to sexual assaults involving members of the Armed Forces as required by FY12 NDAA, Sec. 586.

Implementation Timeline

- 180 Day Implementation (24 June 2014)

TEXT

REPORT ON IMPLEMENTATION OF DEPARTMENT OF DEFENSE POLICY ON THE RETENTION OF AND ACCESS TO EVIDENCE AND RECORDS RELATING TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES.

(a) REVIEW OF EVIDENCE AND RECORDS RETENTION AND ACCESS POLICY.—The Secretary of Defense shall conduct a review of the progress made in developing and implementing the comprehensive policy on the retention of and access to evidence and records relating to sexual assaults involving members of the Armed Forces, which was required by section 586 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1434; 10 U.S.C. 1561 note).

(b) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of the review. In the report, the Secretary shall explain how the Secretary has addressed each of the matters listed in paragraphs (1) through (11) of subsection (c) of section 586 of the National Defense Authorization Act for Fiscal Year 2012 that, at a minimum, were required to be considered in the development of the policy.

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H.R. 3304 §1735 [\[Table of Contents\]](#)

SUMMARY

- Review of the Office of Diversity Management and Equal Opportunity role in sexual harassment cases.

Implementation Timeline

- Immediate implementation

TEXT

REVIEW OF THE OFFICE OF DIVERSITY MANAGEMENT AND EQUAL OPPORTUNITY ROLE IN SEXUAL HARASSMENT CASES.

(a) REVIEW REQUIRED.—The Secretary of Defense shall conduct a review of the Office of Diversity Management and Equal Opportunity for the purposes specified in subsection (b).

(b) ELEMENTS OF STUDY.—In conducting the review under subsection (a), the Secretary of Defense shall—

(1) determine whether sexual harassment cases should be evaluated or addressed within the Office of Diversity Management and Equal Opportunity;

(2) identify and evaluate how the Office of Diversity Management and Equal Opportunity works with the Sexual Assault Prevention and Response Office to address sexual harassment in the Armed Forces and the current role of the Office of Diversity Management and Equal Opportunity in sexual harassment cases;

(3) identify and evaluate the resource and personnel gaps, if any, in the Office of Diversity Management and Equal Opportunity to adequately address sexual harassment cases; and

(4) identify and assess the capability of the Office of Diversity Management and Equal Opportunity to track incidences of sexual harassment cases.

(c) DEFINITION.—In this section, the term “sexual harassment” has the meaning given such term in Department of Defense Directive 1350.2, Department of Defense Military Equal Opportunity Program.

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H.R. 3304 §1741 [\[Table of Contents\]](#)

SUMMARY

- The Services are required to prescribe regulations defining and prohibiting inappropriate conduct by anyone exercising authority over a person in entry-level processing or training, with the recruit or trainee.
 - The violator shall be subject to mandatory processing for administrative separation when the member is not otherwise punitively discharged.
 - SecDef is required to submit a report to the SASC and HASC on whether a new punitive article is needed.

Implementation Timeline

- 120 Day Implementation (25 April 2014) for report to SASC and HASC on recommendations regarding the need for a new UCMJ provision for violations of inappropriate/prohibited relationships.
- 180 Day Implementation (24 June 2014) for the Services to prescribe regulations defining and prohibiting inappropriate conduct by anyone exercising authority over a person in entry-level processing or training, with the recruit or trainee.

TEXT

ENHANCED PROTECTIONS FOR PROSPECTIVE MEMBERS AND NEW MEMBERS OF THE ARMED FORCES DURING ENTRY-LEVEL PROCESSING AND TRAINING.

(a) DEFINING INAPPROPRIATE AND PROHIBITED RELATIONSHIPS, COMMUNICATION, CONDUCT, AND CONTACT BETWEEN CERTAIN MEMBERS.—

(1) POLICY REQUIRED.—The Secretary of a military department and the Secretary of the Department in which the Coast Guard is operating shall maintain a policy that defines and prescribes, for the persons described in paragraph (2), what constitutes an inappropriate and prohibited relationship, communication, conduct, or contact, including when such an action is consensual, between a member of the Armed Forces described in paragraph (2)(A) and a prospective member or member of the Armed Forces described in paragraph (2)(B).

(2) COVERED MEMBERS.—The policy required by paragraph (1) shall apply to—

(A) a member of the Armed Forces who exercises authority or control over, or supervises, a person described in subparagraph (B) during the entry-level processing or training of the person; and

(B) a prospective member of the Armed Forces or a member of the Armed Forces undergoing entry-level processing or training.

(3) INCLUSION OF CERTAIN MEMBERS REQUIRED.—The members of the Armed Forces covered by paragraph (2)(A) shall include, at a minimum, military personnel assigned or attached to duty—

(A) for the purpose of recruiting or assessing persons for enlistment or appointment as a commissioned officer, warrant officer, or enlisted member of the Armed Forces;

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(B) at a Military Entrance Processing Station; or

(C) at an entry-level training facility or school of an Armed Force.

(b) EFFECT OF VIOLATIONS.—A member of the Armed Forces who violates the policy required by subsection (a) shall be subject to prosecution under the Uniform Code of Military Justice.

(c) PROCESSING FOR ADMINISTRATIVE SEPARATION.—

(1) IN GENERAL.—(A) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall require the processing for administrative separation of any member of the Armed Forces described in subsection (a)(2)(A) in response to the first substantiated violation by the member of the policy required by subsection (a), when the member is not otherwise punitively discharged or dismissed from the Armed Forces for that violation.

(B) The Secretary of a military department shall revise regulations applicable to the Armed Forces under the jurisdiction of that Secretary as necessary to ensure compliance with the requirement under subparagraph (A).

(2) REQUIRED ELEMENTS.—(A) In imposing the requirement under paragraph (1), the Secretaries shall ensure that any separation decision regarding a member of the Armed Forces is based on the full facts of the case and that due process procedures are provided under existing law or regulations or additionally prescribed, as considered necessary by the Secretaries, pursuant to subsection (f).

(B) The requirement imposed by paragraph (1) shall not be interpreted to limit or alter the authority of the Secretary of a military department and the Secretary of the Department in which the Coast Guard is operating to process members of the Armed Forces for administrative separation—

(i) for reasons other than a substantiated violation of the policy required by subsection (a); or

(ii) under other provisions of law or regulation.

(3) SUBSTANTIATED VIOLATION.—For purposes of paragraph (1), a violation by a member of the Armed Forces described in subsection (a)(2)(A) of the policy required by subsection (a) shall be treated as substantiated if—

(A) there has been a court-martial conviction for violation of the policy, but the adjudged sentence does not include discharge or dismissal; or

(B) a nonjudicial punishment authority under section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice), has determined that a member has committed an offense in violation of the policy and imposed nonjudicial punishment upon the member.

(d) REPORT ON NEED FOR UCMJ PUNITIVE ARTICLE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the recommendations of the Secretary regarding the need to amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to create an additional article under subchapter X of such chapter to address violations of the policy required by subsection (a).

(e) DEFINITIONS.—In this section:

(1) The term “‘entry-level processing or training’”, with respect to a member of the Armed Forces, means the period beginning on the date on which the member became a member of the Armed Forces and ending on the date on which the member physically

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arrives at that member's first duty assignment following completion of initial entry training (or its equivalent), as defined by the Secretary of the military department concerned or the Secretary of the Department in which the Coast Guard is operating.

(2) The term "prospective member of the Armed Forces" means a person who has had a face-to-face meeting with a member of the Armed Forces assigned or attached to duty described in subsection (a)(3)(A) regarding becoming a member of the Armed Forces, regardless of whether the person eventually becomes a member of the Armed Forces.

(f) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall issue such regulations as may be necessary to carry out this section. The Secretary of Defense shall ensure that, to the extent practicable, the regulations are uniform for each armed force under the jurisdiction of that Secretary.

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H.R. 3304 §1742 [\[Table of Contents\]](#)

SUMMARY

- Upon receipt of a report of a “sex-related offense” against a commander’s Marine, the commander must immediately forward the report to the servicing MCIO. This is already required by MCO 1752.5B.

Implementation Timeline

- Immediate implementation.

TEXT

COMMANDING OFFICER ACTION ON REPORTS ON SEXUAL OFFENSES INVOLVING MEMBERS OF THE ARMED FORCES.

(a) IMMEDIATE ACTION REQUIRED.—A commanding officer who receives a report of a sex-related offense involving a member of the Armed Forces in the chain of command of such officer shall act upon the report in accordance with subsection (b) immediately after receipt of the report by the commanding officer.

(b) ACTION REQUIRED.—The action required by this subsection with respect to a report described in subsection (a) is the referral of the report to the military criminal investigation organization with responsibility for investigating that offense of the military department concerned or such other investigation service of the military department concerned as the Secretary of the military department concerned may specify for purposes of this section.

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H.R. 3304 §1743 [\[Table of Contents\]](#)

SUMMARY

- SecDef shall establish a policy requiring submission of a written incident report within 8 days of the filing of an Unrestricted Report in which a member of the Armed Forces is the victim.
- Report of incident must include:
 - Time/date/location of incident.
 - Type of offense alleged.
 - Service affiliation, assigned unit, and location of victim.
 - Service affiliation, assigned unit, and location of alleged offender, including information regarding whether the alleged offender has been temporarily transferred or removed from an assigned billet or ordered to pretrial confinement or otherwise restricted, if applicable.
 - Post-incident actions taken in connection with the incident, including referral of victim to SARC, notification of incident to MCIO, receipt and processing status of request for expedited transfer if applicable, and issuance of any MPOs in connection with incident.

Implementation Timeline

- 180 Day Implementation (24 June 2014)

TEXT

EIGHT-DAY INCIDENT REPORTING REQUIREMENT IN RESPONSE TO UNRESTRICTED REPORT OF SEXUAL ASSAULT IN WHICH THE VICTIM IS A MEMBER OF THE ARMED FORCES.

(a) INCIDENT REPORTING POLICY REQUIREMENT.—The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall establish and maintain a policy to require the submission by a designated person of a written incident report not later than eight days after an unrestricted report of sexual assault has been made in which a member of the Armed Forces is the victim. At a minimum, this incident report shall be provided to the following:

(1) The installation commander, if such incident occurred on or in the vicinity of a military installation.

(2) The first officer in the grade of O–6, and the first general officer or flag officer, in the chain of command of the victim.

(3) The first officer in the grade of O–6, and the first general officer or flag officer, in the chain of command of the alleged offender if the alleged offender is a member of the Armed Forces.

(b) PURPOSE OF REPORT.—The purpose of the required incident report under subsection (a) is to detail the actions taken or in progress to provide the necessary care and support to the victim of the assault, to refer the allegation of sexual assault to the appropriate investigatory agency, and to provide initial notification of the serious incident when that notification has not already taken place.

(c) ELEMENTS OF REPORT.—

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(1) IN GENERAL.—The report of an incident under subsection (a) shall include, at a minimum, the following:

(A) Time/Date/Location of the alleged incident.

(B) Type of offense alleged.

(C) Service affiliation, assigned unit, and location of the victim.

(D) Service affiliation, assigned unit, and location of the alleged offender, including information regarding whether the alleged offender has been temporarily transferred or removed from an assigned billet or ordered to pretrial confinement or otherwise restricted, if applicable.

(E) Post-incident actions taken in connection with the incident, including the following:

(i) Referral of the victim to a Sexual Assault Response Coordinator for referral to services available to members of the Armed Forces who are victims of sexual assault, including the date of each such referral.

(ii) Notification of incident to appropriate military criminal investigative organization, including the organization notified and date of such notification.

(iii) Receipt and processing status of a request for expedited victim transfer, if applicable.

(iv) Issuance of any military protective orders in connection with the incident.

(2) MODIFICATION.—

(A) IN GENERAL.—The Secretary of Defense may modify the elements required in a report under this section regarding an incident involving a member of the Armed Forces (including the Coast Guard when it is operating as service in the Department of the Navy) if the Secretary determines that such modification will facilitate compliance with best practices for such reporting as identified by the Sexual Assault Prevention and Response Office of the Department of Defense.

(B) COAST GUARD.—The Secretary of the Department in which the Coast Guard is operating may modify the elements required in a report under this section regarding an incident involving a member of the Coast Guard if the Secretary determines that such modification will facilitate compliance with best practices for such reporting as identified by the Coast Guard Office of Work-Life Programs.

(d) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, 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.

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H.R. 3304 §1744 [\[Table of Contents\]](#)

SUMMARY

Requires the Secretaries of the military departments to provide for review of decisions not to refer sex-related offenses for trial by court-martial. The statute requires two different levels of review: (1) the Secretary must review all cases under Arts. 120(a), 120(b), 125, and attempts thereof, where the SJA recommends referral and the convening authority (CA) declines to refer any charges; and (2) the next superior GCMCA must review the same class of cases when the SJA recommends not referring charges and the CA agrees to not refer charges.

Implementation Timeline

- Immediate implementation

TEXT

REVIEW OF DECISIONS NOT TO REFER CHARGES OF CERTAIN SEX-RELATED OFFENSES FOR TRIAL BY COURT-MARTIAL.

(a) REVIEW REQUIRED.—

(1) **IN GENERAL.—**The Secretary of Defense shall require the Secretaries of the military departments to provide for review of decisions not to refer charges for trial by court-martial in cases where a sex-related offense has been alleged by a victim of the alleged offense.

(2) **SPECIFIC REVIEW REQUIREMENTS.—**As part of a review conducted pursuant to paragraph (1), the Secretary of a military department shall require that—

(A) consideration be given to the victim’s statement provided during the course of the criminal investigation regarding the alleged sex-related offense perpetrated against the victim; and

(B) a determination be made whether the victim’s statement and views concerning disposition of the alleged sex-related offense were considered by the convening authority in making the referral decision.

(b) **SEX-RELATED OFFENSE DEFINED.—**In this section, the term “sex-related offense” means any of the following:

(1) Rape or sexual assault under subsection (a) or (b) of section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice).

(2) Forcible sodomy under section 925 of such title (article 125 of the Uniform Code of Military Justice).

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

(c) **REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION OF REFERRAL FOR TRIAL.—**In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file to the Secretary of the military

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department concerned for review as a superior authorized to exercise general court-martial convening authority.

(d) **REVIEW OF CASES NOT REFERRED TO COURT-MARTIAL FOLLOWING STAFF JUDGE ADVOCATE RECOMMENDATION NOT TO REFER FOR TRIAL.**—In any case where a staff judge advocate, pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), recommends that charges of a sex-related offense should not be referred for trial by court-martial and the convening authority decides not to refer any charges to a court-martial, the convening authority shall forward the case file for review to the next superior commander authorized to exercise general court-martial convening authority.

(e) **ELEMENTS OF CASE FILE.**—A case file forwarded to higher authority for review pursuant to subsection (c) or (d) shall include the following:

(1) All charges and specifications preferred under section 830 of title 10, United States Code (article 30 of the Uniform Code of Military Justice).

(2) All reports of investigations of such charges, including the military criminal investigative organization investigation report and the report prepared under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), as amended by section 1702.

(3) A certification that the victim of the alleged sex-related offense was notified of the opportunity to express views on the victim's preferred disposition of the alleged offense for consideration by the convening authority.

(4) All statements of the victim provided to the military criminal investigative organization and to the victim's chain of command relating to the alleged sex-related offense and any statement provided by the victim to the convening authority expressing the victim's view on the victim's preferred disposition of the alleged offense.

(5) The written advice of the staff judge advocate to the convening authority pursuant to section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice).

(6) A written statement explaining the reasons for the convening authority's decision not to refer any charges for trial by court-martial.

(7) A certification that the victim of the alleged sex-related offense was informed of the convening authority's decision to forward the case as provided in subsection (c) or (d).

(f) **NOTICE ON RESULTS OR REVIEW.**—The victim of the alleged sex-related offense shall be notified of the results of the review conducted under subsection (c) or (d) in the manner prescribed by the victims and witness assistance program of the Armed Force concerned.

(g) **VICTIM ALLEGATION OF SEX-RELATED OFFENSE.**—The Secretary of Defense shall require the Secretaries of the military departments to develop a system to ensure that a victim of a possible sex-related offense under the Uniform Code of Military Justice is given the opportunity to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether or not the victim believes that the offense alleged is a sex-related offense subject to the requirements of this section.

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H.R. 3304 §1745 [\[Table of Contents\]](#)

SUMMARY

- Requires notation in a member's records if the member is convicted by court-martial or received nonjudicial punishment or administrative action for sex-related offenses. Note that "sex-related offenses" is not defined in the provision and has different definitions throughout the NDAA.

Implementation Timeline

- Immediate implementation

TEXT

INCLUSION AND COMMAND REVIEW OF INFORMATION ON SEX-RELATED OFFENSES IN PERSONNEL SERVICE RECORDS OF MEMBERS OF THE ARMED FORCES.

(a) INFORMATION ON REPORTS ON SEX-RELATED OFFENSES.—

(1) IN GENERAL.—If a complaint of a sex-related offense is made against a member of the Armed Forces and the member is convicted by court-martial or receives non-judicial punishment or punitive administrative action for such sex-related offense, a notation to that effect shall be placed in the personnel service record of the member, regardless of the member's grade.

(2) PURPOSE.—The purpose of the inclusion of information in personnel service records under paragraph (1) is to alert commanders to the members of their command who have received courts-martial conviction, non-judicial punishment, or punitive administrative action for sex-related offenses in order to reduce the likelihood that repeat offenses will escape the notice of commanders.

(b) LIMITATION ON PLACEMENT.—A notation under subsection (a) may not be placed in the restricted section of the personnel service record of a member.

(c) CONSTRUCTION.—Nothing in subsection (a) or (b) may be construed to prohibit or limit the capacity of a member of the Armed Forces to challenge or appeal the placement of a notation, or location of placement of a notation, in the member's personnel service record in accordance with procedures otherwise applicable to such challenges or appeals.

(d) COMMAND REVIEW OF HISTORY OF SEX-RELATED OFFENSES OF MEMBERS UPON ASSIGNMENT OR TRANSFER TO NEW UNIT.—

(1) REVIEW REQUIRED.—Under uniform regulations prescribed by the Secretary of Defense, the commanding officer of a facility, installation, or unit to which a member of the Armed Forces described in paragraph (2) is permanently assigned or transferred shall review the history of sex-related offenses as documented in the personnel service record of the member in order to familiarize such officer with such history of the member.

(2) COVERED MEMBERS.—A member of the Armed Forces described in this paragraph is a member of the Armed Forces who, at the time of assignment or transfer as described in paragraph (1), has a history of one or more sex-related offenses as

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documented in the personnel service record of such member or such other records or files as the Secretary shall specify in the regulations prescribed under paragraph (1).

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H.R. 3304 §1746 [[Table of Contents](#)]

SUMMARY

- Students at the Service Academies must be provided training on the problem that sexual assault presents, resources available to victims, and consequences for commission of a sexual offense within 14 days of arriving at the school and annually thereafter.

Implementation Timeline

- Immediate implementation

TEXT

PREVENTION OF SEXUAL ASSAULT AT MILITARY SERVICE ACADEMIES.

The Secretary of Defense shall ensure that the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy include a section in the curricula of that military service academy that outlines honor, respect, and character development as such pertain to the issue of preventing sexual assault in the Armed Forces. Such curricula section shall include a brief history of the problem of sexual assault in the Armed Forces, a definition of sexual assault, information relating to reporting a sexual assault, victims' rights, and dismissal and dishonorable discharge for offenders. Training in such section in the curricula shall be provided within 14 days after the initial arrival of a new cadet or midshipman at that military service academy and repeated annually thereafter.

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H.R. 3304 §1747 [[Table of Contents](#)]

SUMMARY

- Whenever a member is required to complete SF 86, the member shall be instructed to answer “no” to question 21 with respect to consultation with a healthcare professional if the member is a victim of a sexual assault and the consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

Implementation Timeline

- Immediate implementation

TEXT

REQUIRED NOTIFICATION WHENEVER MEMBERS OF THE ARMED FORCES ARE COMPLETING STANDARD FORM 86 OF THE QUESTIONNAIRE FOR NATIONAL SECURITY POSITIONS.

(a) NOTIFICATION OF POLICY.—Whenever a member of the Armed Forces is required to complete Standard Form 86 of the Questionnaire for National Security Positions in connection with an application, investigation, or reinvestigation for a security clearance, the member shall be notified of the policy described in subsection (b) regarding question 21 of such form.

(b) POLICY DESCRIBED.—The policy referred to in subsection (a) is the policy of instructing an individual to answer “no” to question 21 of Standard Form 86 of the Questionnaire for National Security Positions with respect to consultation with a health care professional if—

- (1) the individual is a victim of a sexual assault; and
- (2) the consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

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H.R. 3304 §1751 [\[Table of Contents\]](#)

SUMMARY

Implementation Timeline - none

TEXT

SENSE OF CONGRESS ON COMMANDING OFFICER RESPONSIBILITY FOR COMMAND CLIMATE FREE OF RETALIATION.

It is the sense of Congress that—

(1) commanding officers in the Armed Forces are responsible for establishing a command climate in which sexual assault allegations are properly managed and fairly evaluated and in which a victim can report criminal activity, including sexual assault, without fear of retaliation, including ostracism and group pressure from other members of the command;

(2) the failure of commanding officers to maintain such a command climate is an appropriate basis for relief from their command positions; and

(3) senior officers should evaluate subordinate commanding officers on their performance in establishing a command climate as described in paragraph (1) during the regular periodic counseling and performance appraisal process prescribed by the Armed Force concerned for inclusion in the systems of records maintained and used for assignment and promotion selection boards.

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H.R. 3304 §1752 [[Table of Contents](#)]

SUMMARY

Implementation Timeline - none

TEXT

SENSE OF CONGRESS ON DISPOSITION OF CHARGES INVOLVING CERTAIN SEXUAL MISCONDUCT OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE THROUGH COURTS-MARTIAL.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) any charge regarding an offense specified in subsection (b) should be disposed of by court-martial, rather than by non-judicial punishment or administrative action; and

(2) in the case of any charge regarding an offense specified in subsection (b) that is disposed of by non-judicial punishment or administrative action, rather than by court-martial, the disposition authority should include in the case file a justification for the disposition of the charge by non-judicial punishment or administrative action, rather than by court-martial.

(b) COVERED OFFENSES.—An offense specified in this subsection is any of the following offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice):

(1) Rape or sexual assault under subsection (a) or (b) of section 920 of such title (article 120 of the Uniform Code of Military Justice).

(2) Forcible sodomy under section 925 of such title (article 125 of the Uniform Code of Military Justice).

(3) An attempt to commit an offense specified in paragraph (1) or (2), as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).

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H.R. 3304 §1753 [[Table of Contents](#)]

SUMMARY

Implementation Timeline - none

TEXT

SENSE OF CONGRESS ON THE DISCHARGE IN LIEU OF COURT-MARTIAL OF MEMBERS OF THE ARMED FORCES WHO COMMIT SEX-RELATED OFFENSES.

It is the sense of Congress that—

(1) the Armed Forces should be exceedingly sparing in discharging in lieu of court-martial members of the Armed Forces who have committed rape, sexual assault, forcible sodomy, or attempts to commit such offenses, and should do so only when the facts of the case clearly warrant such discharge;

(2) whenever possible, the victims of offenses referred to in paragraph (1) shall be consulted prior to the determination regarding whether to discharge the members who committed such offenses;

(3) convening authorities should consider the views of victims of offenses referred to in paragraph (1) when determining whether to discharge the members who committed such offenses in lieu of trying such members by court-martial; and

(4) the discharge of any member who is discharged as described in paragraph (1) should be characterized as Other Than Honorable.