

## Calendar No. 293

113TH CONGRESS  
2D SESSION**S. 1917**

To provide for additional enhancements of the sexual assault prevention  
and response activities of the Armed Forces.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2014

Mrs. McCASKILL (for herself, Ms. AYOTTE, and Mrs. FISCHER) introduced  
the following bill; which was read the first time

JANUARY 15, 2014

Read the second time and placed on the calendar

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**A BILL**

To provide for additional enhancements of the sexual assault  
prevention and response activities of the Armed Forces.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Victims Protection Act  
5 of 2014”.

1 **SEC. 2. INCLUSION OF SENIOR TRIAL COUNSEL DETER-**  
2 **MINATIONS ON REFERRAL OF CASES TO**  
3 **TRIAL BY COURT-MARTIAL IN CASES RE-**  
4 **VIEWED BY SECRETARIES OF MILITARY DE-**  
5 **PARTMENTS.**

6 Section 1744 of the National Defense Authorization  
7 Act for Fiscal Year 2014 is amended—

8 (1) in subsection (c)—

9 (A) in the subsection heading, by inserting  
10 “OR SENIOR TRIAL COUNSEL” after “STAFF  
11 JUDGE ADVOCATE”; and

12 (B) by inserting “or the senior trial coun-  
13 sel detailed to the case” after “Military Jus-  
14 tice),”; and

15 (2) in subsection (d)—

16 (A) in the subsection heading, by inserting  
17 “OR SENIOR TRIAL COUNSEL” after “STAFF  
18 JUDGE ADVOCATE”; and

19 (B) by inserting “or the senior trial coun-  
20 sel detailed to the case” after “Military Jus-  
21 tice),”.

22 **SEC. 3. ADDITIONAL ENHANCEMENTS OF MILITARY DE-**  
23 **PARTMENT ACTIONS ON SEXUAL ASSAULT**  
24 **PREVENTION AND RESPONSE.**

25 (a) **ADDITIONAL DUTY OF SPECIAL VICTIMS’ COUN-**  
26 **SEL.**—In addition to any duties authorized by section

1 1044e of title 10, United States Code (as added by section  
2 1716 of the National Defense Authorization Act for Fiscal  
3 Year 2014), a Special Victims' Counsel designated under  
4 subsection (a) of such section 1044e shall provide advice  
5 to victims of sexual assault on the advantages and dis-  
6 advantages of prosecution of the offense concerned by  
7 court-martial or by a civilian court with jurisdiction over  
8 the offense before such victims express their preference  
9 as to the prosecution of the offense under subsection (b).

10 (b) CONSULTATION WITH VICTIMS REGARDING  
11 PREFERENCE IN PROSECUTION OF CERTAIN SEXUAL OF-  
12 FENSES.—

13 (1) IN GENERAL.—The Secretaries of the mili-  
14 tary departments shall each establish a process to  
15 ensure consultation with the victim of a covered sex-  
16 ual offense that occurs in the United States with re-  
17 spect to the victim's preference as to whether the of-  
18 fense should be prosecuted by court-martial or by a  
19 civilian court with jurisdiction over the offense.

20 (2) WEIGHT AFFORDED PREFERENCE.—The  
21 preference expressed by a victim under paragraph  
22 (1) with respect to the prosecution of an offense,  
23 while not binding, should be afforded great weight in  
24 the determination whether to prosecute the offense  
25 by court-martial or by a civilian court.

1           (3) NOTICE TO VICTIM OF LACK OF CIVILIAN  
2 CRIMINAL PROSECUTION AFTER PREFERENCE FOR  
3 SUCH PROSECUTION.—In the event a victim ex-  
4 presses a preference under paragraph (1) in favor of  
5 prosecution of an offence by civilian court and the  
6 civilian authorities determine to decline prosecution,  
7 or defer to prosecution by court-martial, the victim  
8 shall be promptly notified of that determination.

9           (c) PERFORMANCE APPRAISALS OF MEMBERS OF  
10 THE ARMED FORCES.—

11           (1) APPRAISALS OF ALL MEMBERS ON COMPLI-  
12 ANCE WITH SEXUAL ASSAULT PREVENTION AND RE-  
13 SPONSE PROGRAMS.—The Secretaries of the military  
14 departments shall each ensure that the written per-  
15 formance appraisals of members of the Armed  
16 Forces (whether officers or enlisted members) under  
17 the jurisdiction of such Secretary include an assess-  
18 ment of the extent to which each such member sup-  
19 ports the sexual assault prevention and response  
20 program of the Armed Force concerned.

21           (2) PERFORMANCE APPRAISALS OF COM-  
22 MANDING OFFICERS.—The Secretaries of the mili-  
23 tary departments shall each ensure that the per-  
24 formance appraisals of commanding officers under  
25 the jurisdiction of such Secretary indicate the extent

1 to which each such commanding officer has or has  
2 not established a command climate in which—

3 (A) allegations of sexual assault are prop-  
4 erly managed and fairly evaluated; and

5 (B) a victim can report criminal activity,  
6 including sexual assault, without fear of retalia-  
7 tion, including ostracism and group pressure  
8 from other members of the command.

9 (d) COMMAND CLIMATE ASSESSMENTS FOLLOWING  
10 INCIDENTS OF CERTAIN SEXUAL OFFENSES.—

11 (1) ASSESSMENTS REQUIRED.—The Secretaries  
12 of the military departments shall each establish a  
13 process whereby a command climate assessment is  
14 performed following an incident involving a covered  
15 sexual offense for each of the command of the ac-  
16 cused and the command of the victim. If the accused  
17 and the victim are within the same command, only  
18 a single climate assessment is required. The process  
19 shall ensure the timely completion of command cli-  
20 mate assessments for provision to military criminal  
21 investigation organizations and commanders pursu-  
22 ant to paragraph (2).

23 (2) PROVISION TO MILITARY CRIMINAL INVES-  
24 TIGATION ORGANIZATIONS AND COMMANDERS.—A

1 command climate assessment performed pursuant to  
2 paragraph (1) shall be provided to the following:

3 (A) The military criminal investigation or-  
4 ganization conducting the investigation of the  
5 offense concerned.

6 (B) The commander next higher in the  
7 chain of command of the command covered by  
8 the climate assessment.

9 (e) CONFIDENTIAL REVIEW OF CHARACTERIZATION  
10 OF TERMS OF DISCHARGE OF VICTIMS OF SEXUAL OF-  
11 FENSES.—

12 (1) IN GENERAL.—The Secretaries of the mili-  
13 tary departments shall each establish a confidential  
14 process, through boards for the correction of mili-  
15 tary records of the military department concerned,  
16 by which an individual who was the victim of a cov-  
17 ered sexual offense during service in the Armed  
18 Forces may challenge, on the basis of being the vic-  
19 tim of such an offense, the terms or characterization  
20 of the individual's discharge or separation from the  
21 Armed Forces.

22 (2) CONSIDERATION OF INDIVIDUAL EXPERI-  
23 ENCES IN CONNECTION WITH OFFENSES.—In decid-  
24 ing whether to modify the terms or characterization  
25 of an individual's discharge or separation pursuant

1 to the process required by paragraph (1), the Sec-  
2 retary of the military department concerned shall in-  
3 struct boards to give due consideration to the psy-  
4 chological and physical aspects of the individual's ex-  
5 perience in connection with the offense concerned,  
6 and to what bearing such experience may have had  
7 on the circumstances surrounding the individual's  
8 discharge or separation from the Armed Forces.

9 (3) PRESERVATION OF CONFIDENTIALITY.—  
10 Documents considered and decisions rendered pursu-  
11 ant to the process required by paragraph (1) shall  
12 not be made available to the public, except with the  
13 consent of the individual concerned.

14 (f) COVERED SEXUAL OFFENSE DEFINED.—In sub-  
15 sections (a) through (e), the term “covered sexual offense”  
16 means any of the following:

17 (1) Rape or sexual assault under subsection (a)  
18 or (b) of section 920 of title 10, United States Code  
19 (article 120 of the Uniform Code of Military Jus-  
20 tice).

21 (2) Forcible sodomy under section 925 of title  
22 10, United States Code (article 125 of the Uniform  
23 Code of Military Justice).

24 (3) An attempt to commit an offense specified  
25 in paragraph (1) or (2) as punishable under section

1 880 of title 10, United States Code (article 80 of the  
2 Uniform Code of Military Justice).

3 (g) MODIFICATION OF MILITARY RULES OF EVI-  
4 DENCE RELATING TO ADMISSIBILITY OF GENERAL MILI-  
5 TARY CHARACTER TOWARD PROBABILITY OF INNO-  
6 CENCE.—Not later than 180 days after the date of the  
7 enactment of this Act, Rule 404(a) of the Military Rules  
8 of Evidence shall be modified to clarify that the general  
9 military character of an accused is not admissible for the  
10 purpose of showing the probability of innocence of the ac-  
11 cused, except that evidence of a trait of the military char-  
12 acter of an accused may be offered in evidence by the ac-  
13 cused when that trait is relevant to an element of an of-  
14 fense for which the accused has been charged.

15 **SEC. 4. APPLICABILITY OF SEXUAL ASSAULT PREVENTION**  
16 **AND RESPONSE AND RELATED MILITARY**  
17 **JUSTICE ENHANCEMENTS TO MILITARY**  
18 **SERVICE ACADEMIES.**

19 (a) MILITARY SERVICE ACADEMIES.—The Secretary  
20 of the military department concerned shall ensure that the  
21 provisions of title XVII of the National Defense Author-  
22 ization Act for Fiscal Year 2014 (as amended by this Act)  
23 and this Act apply to the United States Military Academy,  
24 the Naval Academy, and the Air Force Academy, as appli-  
25 cable.



1 (b) COAST GUARD ACADEMY.—The Secretary of  
2 Homeland Security shall ensure that the provisions of title  
3 XVII of the National Defense Authorization Act for Fiscal  
4 Year 2014 (as so amended) and this Act apply to the  
5 Coast Guard Academy.

6 **SEC. 5. COLLABORATION BETWEEN THE DEPARTMENT OF**  
7 **DEFENSE AND THE DEPARTMENT OF JUS-**  
8 **TICE IN EFFORTS TO PREVENT AND RE-**  
9 **SPOND TO SEXUAL ASSAULT.**

10 (a) STRATEGIC FRAMEWORK ON COLLABORATION  
11 REQUIRED.—Not later than 270 days after the date of  
12 the enactment of this Act, the Secretary of Defense and  
13 the Attorney General shall jointly develop a strategic  
14 framework for ongoing collaboration between the Depart-  
15 ment of Defense and the Department of Justice in their  
16 efforts to prevent and respond to sexual assault. The  
17 framework shall be based on and include the following:

18 (1) An assessment of the role of the Depart-  
19 ment of Justice in investigations and prosecutions of  
20 sexual assault cases in which the Department of De-  
21 fense and the Department of Justice have concur-  
22 rent jurisdiction, with the assessment to include a  
23 review of and list of recommended revisions to rel-  
24 evant Memoranda of Understanding and related doc-

1       uments between the Department of Justice and the  
2       Department of Defense.

3           (2) An assessment of the feasibility of estab-  
4       lishing the position of advisor on military sexual as-  
5       saults within the Department of Justice (using exist-  
6       ing Department resources and personnel) to assist in  
7       the activities required under paragraph (1) and pro-  
8       vide to the Department of Defense investigative and  
9       other assistance in sexual assault cases occurring on  
10      domestic and overseas military installations over  
11      which the Department of Defense has primary juris-  
12      diction, with the assessment to address the feasi-  
13      bility of maintaining representatives or designees of  
14      the advisor at military installations for the purpose  
15      of reviewing cases of sexual assault and providing  
16      assistance with the investigation and prosecution of  
17      sexual assaults.

18           (3) An assessment of the number of unsolved  
19      sexual assault cases that have occurred on military  
20      installations, and a plan, with appropriate bench-  
21      marks, to review those cases using currently avail-  
22      able civilian and military law enforcement resources,  
23      such as new technology and forensics information.

1           (4) A strategy to leverage efforts by the De-  
2           partment of Defense and the Department of Jus-  
3           tice—

4                   (A) to improve the quality of investiga-  
5                   tions, prosecutions, specialized training, services  
6                   to victims, awareness, and prevention regarding  
7                   sexual assault; and

8                   (B) to address social conditions that relate  
9                   to sexual assault.

10           (5) Mechanisms to promote information sharing  
11           and best practices between the Department of De-  
12           fense and the Department of Justice on prevention  
13           and response to sexual assault, including victim as-  
14           sistance through the Violence against Women Act  
15           and Office for Victims of Crime programs of the De-  
16           partment of Justice.

17           (b) REPORT.—The Secretary of Defense and the At-  
18           torney General shall jointly submit to the appropriate  
19           committees of Congress a report on the framework re-  
20           quired by subsection (a). The report shall—

21                   (1) describe the manner in which the Depart-  
22                   ment of Defense and Department of Justice will col-  
23                   laborate on an ongoing basis under the framework;

24                   (2) explain obstacles to implementing the  
25                   framework; and

1           (3) identify changes in laws necessary to  
2           achieve the purpose of this section.

3           (c) APPROPRIATE COMMITTEES OF CONGRESS DE-  
4 FINED.—In this section, the term “appropriate commit-  
5 tees of Congress” means—

6           (1) the Committee on Armed Services and the  
7           Committee on the Judiciary of the Senate; and

8           (2) the Committee on Armed Services and the  
9           Committee on the Judiciary of the House of Rep-  
10          resentatives.

11 **SEC. 6. MODIFICATION OF DEADLINE FOR REPORT ON**  
12                                   **NEED FOR PUNITIVE UCMJ ARTICLE ON IN-**  
13                                   **APPROPRIATE CONTACT WITH PROSPECTIVE**  
14                                   **AND NEW MEMBERS OF THE ARMED FORCES.**

15          Section 1741(d) of the National Defense Authoriza-  
16 tion Act for Fiscal Year 2014 is amended by striking “120  
17 days” and inserting “60 days”.

18 **SEC. 7. SENSE OF SENATE ON INDEPENDENT PANEL ON RE-**  
19                                   **VIEW AND ASSESSMENT ON RESPONSE SYS-**  
20                                   **TEMS TO SEXUAL ASSAULT CRIMES.**

21          It is the sense of the Senate that—

22           (1) the panel to review and assess the systems  
23           used to respond to sexual assault established by sec-  
24           tion 576 of the National Defense Authorization Act  
25           for Fiscal Year 2013 (Public Law 112–239; 126

1 Stat. 1758) is conducting an independent assess-  
2 ment of the systems used to investigate, prosecute,  
3 and adjudicate crimes involving adult sexual assault  
4 and related offenses;

5 (2) the work of the panel will be critical in in-  
6 forming the efforts of Congress to combat rape, sex-  
7 ual assault, and other sex-related crimes in the  
8 Armed Forces;

9 (3) the panel should include in its assessment  
10 under subsection (d)(1) of section 576 of the Na-  
11 tional Defense Authorization Act for Fiscal Year  
12 2013 a review of the reforms that will be enacted  
13 pursuant to title XVII of the National Defense Au-  
14 thorization Act for Fiscal Year 2014 (as amended by  
15 this Act) and this Act; and

16 (4) the views of the victim advocate community  
17 should continue to be well-represented on the panel,  
18 and input from victims should continue to play a  
19 central role in informing the work of the panel.

**Calendar No. 293**

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1917**

**A BILL**

To provide for additional enhancements of the sexual assault prevention and response activities of the Armed Forces.

JANUARY 15, 2014

Read the second time and placed on the calendar