

113TH CONGRESS
1ST SESSION

H. R. 1867

To amend title 10, United States Code, to make certain improvements in the Uniform Code of Military Justice related to sex-related offenses committed by members of the Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2013

Mr. TURNER (for himself and Ms. TSONGAS) introduced the following bill;
which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to make certain improvements in the Uniform Code of Military Justice related to sex-related offenses committed by members of the Armed Forces, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Better Enforcement for Sexual Assault Free Environ-
6 ments Act of 2013” or “BE SAFE Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Limitations on convening authority discretion regarding court-martial findings and sentence.
- Sec. 3. Mandatory discharge or dismissal for certain sex-related offenses under the Uniform Code of Military Justice and trial of such offenses by general courts-martial.
- Sec. 4. Elimination of five-year statute of limitations on trial by court-martial for additional offenses involving sex-related crimes.
- Sec. 5. Consideration of need for, and authority to provide for, temporary administrative reassignment or removal of a member on active duty who is accused of committing a sexual assault or related offense.
- Sec. 6. Victims' Counsel for victims of sex-related offenses committed by members of the Armed Forces and related provisions.
- Sec. 7. Secretary of Defense report on sentencing reform.
- Sec. 8. Secretary of Defense report on role of commanders in military justice process.

1 **SEC. 2. LIMITATIONS ON CONVENING AUTHORITY DISCRE-**
 2 **TION REGARDING COURT-MARTIAL FINDINGS**
 3 **AND SENTENCE.**

4 (a) **ELIMINATION OF UNLIMITED COMMAND PRE-**
 5 **ROGATIVE AND DISCRETION.**—Paragraph (1) of section
 6 860(c) of title 10, United States Code (article 60(c) of
 7 the Uniform Code of Military Justice) is amended by
 8 striking the first sentence.

9 (b) **LIMITATIONS ON DISCRETION REGARDING**
 10 **COURT-MARTIAL FINDINGS.**—Paragraph (3) of section
 11 860(c) of title 10, United States Code (article 60(c) of
 12 the Uniform Code of Military Justice) is amended to read
 13 as follows:

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

1 “(B) If a convening authority or other person acts
2 on the findings of a court-martial, the convening authority
3 or other person may not—

4 “(i) dismiss any charge or specification, other
5 than a charge or specification for a minor offense,
6 by setting aside a finding of guilty thereto; or

7 “(ii) change a finding of guilty to a charge or
8 specification, other than a charge or specification for
9 a minor offense, to a finding of guilty to an offense
10 that is a lesser included offense of the offense stated
11 in the charge or specification.

12 “(C) If a convening authority or other person acts
13 on the findings to dismiss or change any charge or speci-
14 fication for a minor offense, the convening authority or
15 other person shall prepare a written explanation of such
16 action. Such written explanation shall be immediately pro-
17 vided and made a part of the record of the court-martial
18 at the time the action is taken and becomes effective.

19 “(D) For purposes of this paragraph, the convening
20 authority or other person may treat an offense as a minor
21 offense only if the sentence adjudged by a court-martial
22 for an offense, or combination of offenses, is not more se-
23 vere than confinement for 30 days, forfeiture of two-thirds
24 pay per month for one month, or reduction to the lowest
25 pay grade, or some combination thereof. However, a

1 charge or specification of murder, rape, sexual assault,
2 rape or sexual assault of a child, or any other offense pun-
3 ishable by death may not, under any circumstances, be
4 considered a minor offense for purposes of this paragraph,
5 regardless of the adjudged sentence.”.

6 (c) LIMITATIONS OF DISCRETION TO MODIFY AN AD-
7 JUDGED SENTENCE TO LESS THAN MANDATORY MIN-
8 IMUM SENTENCE.—Section 860(c) of title 10, United
9 States Code (article 60(c) of the Uniform Code of Military
10 Justice) is amended—

11 (1) in paragraph (2), by striking “The con-
12 vening authority” and inserting the following:

13 “(B) Except as provided in paragraph (4), the con-
14 vening authority”; and

15 (2) by adding at the end the following new
16 paragraph:

17 “(4) If a mandatory minimum sentence exists for a
18 charge, the convening authority or another person author-
19 ized to act under this section may not modify an adjudged
20 sentence to reduce the sentence to less than the mandatory
21 minimum sentence, except that, upon the recommendation
22 of the trial counsel, the convening authority or other per-
23 son shall have the authority to impose a sentence below
24 a level established by statute as a minimum sentence so
25 as to reflect the substantial assistance by the accused in

1 the investigation or prosecution of another person who has
2 committed an offense.”.

3 (d) EXPLANATION FOR ANY DECISION DIS-
4 APPROVING, COMMUTING, OR SUSPENDING COURT-MAR-
5 TIAL SENTENCE.—Section 860(c)(2) of title 10, United
6 States Code (article 60(c)(2) of the Uniform Code of Mili-
7 tary Justice), as amended by subsection (c)(1), is further
8 amended—

9 (1) by inserting “(A)” after “(2)”; and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 “(C) If the convening authority or other person
13 makes a decision to disapprove, commute, or suspend the
14 sentence in whole or in part, the convening authority or
15 such person shall prepare a detailed written explanation
16 of such action. Such written explanation shall be imme-
17 diately provided and made a part of the record of the
18 court-martial at the time the action is taken and becomes
19 effective.”.

20 (e) CONFORMING AMENDMENT TO OTHER AUTHOR-
21 ITY FOR CONVENING AUTHORITY TO SUSPEND SEN-
22 TENCE.—Section 871(d) of such title (article 71(d) of the
23 Uniform Code of Military Justice) is amended by adding
24 at the end the following new sentence: “Paragraphs (2)
25 and (4) of subsection (c) of section 860 of this title (article

1 60) shall apply to any decision by the convening authority
2 or such person to suspend the execution of any sentence
3 or part thereof under this subsection.”.

4 (f) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect 180 days after the date of
6 the enactment of this Act and shall apply with respect to
7 findings and sentences of courts-martial reported to con-
8 vening authorities under section 860 of title 10, United
9 States Code (article 60 of the Uniform Code of Military
10 Justice), as amended by this section, on or after that ef-
11 fective date.

12 **SEC. 3. MANDATORY DISCHARGE OR DISMISSAL FOR CER-**
13 **TAIN SEX-RELATED OFFENSES UNDER THE**
14 **UNIFORM CODE OF MILITARY JUSTICE AND**
15 **TRIAL OF SUCH OFFENSES BY GENERAL**
16 **COURTS-MARTIAL.**

17 (a) MANDATORY DISCHARGE OR DISMISSAL RE-
18 QUIRED.—

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

22 (A) by inserting “(a)” before “The punish-
23 ment”; and

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

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

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

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

9 “(B) Forcible sodomy under section 925 of this
 10 title (article 125).

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

14 (2) CLERICAL AMENDMENTS.—

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

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

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

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

23 (b) JURISDICTION LIMITED TO GENERAL COURTS-
 24 MARTIAL.—Section 818 of such title (article 18 of the
 25 Uniform Code of Military Justice) is amended—

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

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

4 “(b) A general court-martial”; and

5 (3) by adding at the end the following new sub-
6 section:

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

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect 180 days after the date of
13 the enactment of this Act.

14 **SEC. 4. ELIMINATION OF FIVE-YEAR STATUTE OF LIMITA-**
15 **TIONS ON TRIAL BY COURT-MARTIAL FOR AD-**
16 **DITIONAL OFFENSES INVOLVING SEX-RE-**
17 **LATED CRIMES.**

18 (a) INCLUSION OF ADDITIONAL OFFENSES.—Section
19 843(a) of title 10, United States Code (article 43(a) of
20 the Uniform Code of Military Justice) is amended by
21 striking “rape, or rape of a child” and inserting “rape
22 or sexual assault, or rape or sexual assault of a child”.

23 (b) CONFORMING AMENDMENT.—Section
24 843(b)(2)(B)(i) of title 10, United States Code (article
25 43(b)(2)(B)(i) of the Uniform Code of Military Justice)

1 is amended by inserting before the period at the end the
2 following: “, unless the offense is covered by subsection
3 (a)”.

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

11 **SEC. 5. CONSIDERATION OF NEED FOR, AND AUTHORITY**
12 **TO PROVIDE FOR, TEMPORARY ADMINISTRA-**
13 **TIVE REASSIGNMENT OR REMOVAL OF A**
14 **MEMBER ON ACTIVE DUTY WHO IS ACCUSED**
15 **OF COMMITTING A SEXUAL ASSAULT OR RE-**
16 **LATED OFFENSE.**

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

20 **“§ 674. Temporary administrative reassignment or re-**
21 **moval of a member on active duty ac-**
22 **cused of committing a sexual assault or**
23 **related offense**

24 “(a) GUIDANCE FOR TIMELY CONSIDERATION AND
25 ACTION.—The Secretary concerned may provide guidance,

1 within guidelines provided by the Secretary of Defense, for
2 commanders regarding their authority to make a timely
3 determination, and to take action, regarding whether a
4 member of the armed forces serving on active duty who
5 is alleged to have committed a sexual assault or other sex-
6 related offense covered by section 920, 920a, 920b, or
7 920c of this title (article 120, 120a, 120b, or 120c of the
8 Uniform Code of Military Justice) should be temporarily
9 reassigned or removed from a position of authority or as-
10 signment, not as a punitive measure, but solely for the
11 purpose of maintaining good order and discipline within
12 the member's unit.

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

18 (b) CLERICAL AMENDMENT.—The table of sections
19 at the beginning of such chapter is amended by inserting
20 after the item relating to section 673 the following new
21 item:

“674. Temporary administrative reassignment or removal of a member on active
duty accused of committing a sexual assault or related of-
fense.”.

22 (c) ADDITIONAL TRAINING REQUIREMENT FOR COM-
23 MANDERS.—The Secretary of Defense shall provide for in-
24 clusion of information and discussion regarding the avail-

1 ability and use of the authority provided by section 674
2 of title 10, United States Code, as added by subsection
3 (a), as part of the training for new and prospective com-
4 manders at all levels of command required by section
5 585(b) of the National Defense Authorization Act for Fis-
6 cal Year 2012 (Public Law 112–81; 10 U.S.C. 1561 note).

7 **SEC. 6. VICTIMS’ COUNSEL FOR VICTIMS OF SEX-RELATED**
8 **OFFENSES COMMITTED BY MEMBERS OF THE**
9 **ARMED FORCES AND RELATED PROVISIONS.**

10 (a) DESIGNATION AND DUTIES.—

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

14 **“§ 1044e. Victims’ Counsel for victims of sex-related**
15 **offenses committed by members of the**
16 **armed forces**

17 “(a) DESIGNATION; PURPOSES.—Under regulations
18 prescribed by the Secretary of Defense, the Secretary con-
19 cerned shall designate legal counsel (to be known as ‘Vic-
20 tims’ Counsel’) for the purpose of providing legal assist-
21 ance to any member of the armed forces, any dependent
22 of a member, or any other individual eligible for military
23 legal assistance under section 1044 of this title, who is
24 the victim of a sex-related offense, regardless of whether
25 the allegation is restricted or unrestricted.

1 “(b) TYPES OF LEGAL ASSISTANCE.—The types of
2 legal assistance contemplated by this subsection may in-
3 clude the following:

4 “(1) Legal consultation regarding potential
5 criminal liability of the victim stemming from or in
6 relation to the circumstances surrounding the al-
7 leged sex-related offense and the victim’s right to
8 seek military defense services.

9 “(2) Legal consultation regarding the Victim
10 Witness Assistance Program (VWAP), including—

11 “(A) the rights and benefits afforded the
12 victim;

13 “(B) the role of the Victim/Witness Adv-
14 cate or Liaison and what privileges do or do not
15 exist between the victim and the Advocate or
16 Liaison; and

17 “(C) the nature of communication made to
18 the Victim/Witness Advocate or Liaison as op-
19 posed to communication made to the Legal As-
20 sistance Attorney.

21 “(3) Legal consultation regarding the potential
22 for civil litigation against other parties (other than
23 the Department of Defense).

1 “(4) Legal consultation regarding any pro-
2 ceedings of the military justice process that the vic-
3 tim may observe.

4 “(5) Legal consultation regarding the military
5 justice system, including—

6 “(A) the roles and responsibilities of the
7 trial counsel, the defense counsel, and investiga-
8 tors;

9 “(B) any proceedings of the military jus-
10 tice process in which the victim may observe or
11 participate as a witness or other party;

12 “(C) the Government’s authority to compel
13 cooperation and testimony; and

14 “(D) the victim’s responsibility to testify,
15 and other duties to the court.

16 “(6) Accompanying the victim at any pro-
17 ceedings in connection with the reporting, military
18 investigation, and military prosecution of the alleged
19 sex-related offense.

20 “(7) Legal consultation regarding—

21 “(A) services available from appropriate
22 agencies or offices for emotional and mental
23 health counseling and other medical services;

24 “(B) eligibility for and requirements for
25 obtaining any available military and veteran

1 benefits, such as transitional compensation ben-
2 efits found in section 1059 of this title and
3 other State and Federal victims' compensation
4 programs; and

5 “(C) the availability of, and any protec-
6 tions offered by, civilian and military restrain-
7 ing orders.

8 “(8) Legal consultation and assistance in per-
9 sonal civil legal matters in accordance with section
10 1044 of this title.

11 “(9) Such other legal assistance as the Sec-
12 retary concerned may specify under this subsection.

13 “(c) QUALIFICATIONS.—An individual may not be
14 designated as a Victims' Counsel under this section unless
15 the individual is—

16 “(1) a judge advocate or a civilian attorney
17 serving as a legal assistance attorney who is a grad-
18 uate of an accredited law school and is a member of
19 the bar of a Federal court or of the highest court
20 of a State; and

21 “(2) is certified as competent to be designated
22 as a Victims' Counsel by the Judge Advocate Gen-
23 eral of the Armed Force of which the individual is
24 a member.

1 “(d) ADMINISTRATIVE RESPONSIBILITY.—Under
2 such regulations as may be prescribed by the Secretary
3 concerned, the Judge Advocate General (as defined in sec-
4 tion 801(1) of this title) under the jurisdiction of the Sec-
5 retary, and within the Marine Corps the Staff Judge Ad-
6 vocate to the Commandant of the Marine Corps, is respon-
7 sible for the establishment and supervision of individuals
8 designated as Victims’ Counsel.

9 “(e) SEX-RELATED OFFENSE DEFINED.—In this
10 subsection, a ‘sex-related offense’ includes—

11 “(1) any offense covered by section 920, 920a,
12 920b, 920c, or 925 (article 120, 120a, 120b, 120c,
13 or 125 of the Uniform Code of Military Justice); or

14 “(2) an attempt to commit an offense specified
15 in a paragraph (1) as punishable under section 880
16 of this title (article 80 of the Uniform Code of Mili-
17 tary Justice).

18 “(f) AVAILABILITY OF VICTIMS’ COUNSEL.—A mem-
19 ber of the armed forces, or a dependent of a member, or
20 any other individual eligible for military legal assistance
21 under section 1044 of this title, who is the victim of an
22 alleged sex-related offense shall be provided assistance by
23 a Victims’ Counsel upon report of an allegation of a sex-
24 related offense or at the time the victim seeks assistance
25 from a Sexual Assault Response Coordinator, a Sexual As-

1 assault Victim Advocate, a military criminal investigator, a
2 victim/witness liaison, a trial counsel, a healthcare pro-
3 vider, or any other personnel designated by the Secretary
4 concerned for purposes of this subsection. The assistance
5 of a Victims' Counsel under this subsection shall be avail-
6 able to a member or a dependent regardless of whether
7 the member or dependent elects unrestricted or restricted
8 reporting of the sex-related offense. The member or de-
9 pendent shall also be informed that the assistance of the
10 Victims' Counsel is an option and may be declined, in
11 whole or in part, at any time.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of such chapter is amended
14 by inserting after the item relating to section 1044d
15 the following new item:

“1044e. Victims' Counsel for victims of sexual assault-related offenses com-
mitted by members of the armed forces.”.

16 (3) CONFORMING AMENDMENT.—Section
17 1044(d)(2)(B) of this title is amended by striking
18 “and 1044d” and inserting “1044d, and 1044e”.

19 (b) ENHANCED TRAINING REQUIREMENT.—The Sec-
20 retary of each military department, and the Secretary of
21 Homeland Security with respect to the Coast Guard when
22 it is not operating as a service in the Department of the
23 Navy, shall implement, within the guidelines provided by
24 the Secretary of Defense, in-depth and advanced training

1 for all military and civilian attorneys assigned under sec-
2 tion 1044 or 1044e of title 10, United States Code, to
3 provide legal assistance to victims of sex-related offenses.

4 (c) SECRETARY OF DEFENSE REPORTING REQUIRE-
5 MENT.—

6 (1) REPORT REQUIRED.—Not later than 90
7 days after the date of the enactment of this Act, the
8 Secretary of Defense, in coordination with the Sec-
9 retary of Homeland Security with respect to the
10 Coast Guard, shall submit to the Committees on
11 Armed Services of the Senate and the House of Rep-
12 resentatives a report outlining how the Armed
13 Forces have implemented the requirements of sec-
14 tion 1044e of title 10, United States Code, as added
15 by subsection (a).

16 (2) ADDITIONAL SUBMISSION REQUIREMENT.—
17 The report required by paragraph (1) shall also be
18 submitted to the Independent Review Panels estab-
19 lished by section 576 of the National Defense Au-
20 thorization Act for Fiscal Year 2013 (Public Law
21 112–239; 126 Stat. 1758), and the Joint Services
22 Committee on Military Justice.

23 (d) ADDITIONAL DUTIES FOR INDEPENDENT RE-
24 VIEW PANEL.—The Independent Review Panel established
25 by section 576(a)(1) of the National Defense Authoriza-

1 tion Act for Fiscal Year 2013 (Public Law 112–239; 126
2 Stat. 1758) shall include as part of its duties the fol-
3 lowing:

4 (1) An assessment of the roles, responsibilities,
5 and authorities of the Victims’ Counsel to provide
6 legal assistance to victims of sex-related offenses
7 under section 1044e of title 10, United States Code,
8 as added by subsection (a).

9 (2) An assessment of whether the roles, respon-
10 sibilities, and authorities of the Victims’ Counsel to
11 provide legal assistance to victims of sex-related of-
12 fenses under such section should be expanded to in-
13 clude legal standing to represent the alleged victim
14 during investigative and military justice proceedings
15 in connection with the prosecution of a sex-related
16 offense.

17 **SEC. 7. SECRETARY OF DEFENSE REPORT ON SENTENCING**
18 **REFORM.**

19 (a) **REPORTS REQUIRED.**—Not later than 180 days
20 after the date of the enactment of this Act, the Secretary
21 of Defense shall submit to the Committees on Armed Serv-
22 ices of the Senate and the House of Representatives a re-
23 port on sentencing guidelines and mandatory minimum
24 sentencing provisions under the Uniform Code of Military
25 Justice.

1 (b) CONTENTS OF REPORT.—The report required by
2 subsection (a) shall include the following:

3 (1) An assessment of the effects of mandatory
4 minimum sentencing provisions under the Uniform
5 Code of Military Justice on the goal of eliminating
6 unwarranted sentencing disparity and other goals of
7 sentencing.

8 (2) An assessment of the penalties imposed by
9 the current mandatory minimum sentences in rela-
10 tion to the offenses for which imposed under the
11 Uniform Code of Military Justice.

12 (3) A description of the interaction between
13 mandatory minimum sentencing provisions under the
14 Uniform Code of Military Justice and plea agree-
15 ments.

16 (4) An assessment of the appropriateness of
17 statutorily mandated minimum sentencing provisions
18 for additional serious offenses under the Uniform
19 Code of Military Justice.

20 (5) An assessment of the advisory sentencing
21 guidelines used in civilian courts and whether it
22 would be advisable to promulgate sentencing guide-
23 lines for use in courts-martial.

24 (6) Any other information that the Secretary of
25 Defense determines would contribute to a thorough

1 assessment of sentencing guidelines and mandatory
2 minimum sentencing provisions under the Uniform
3 Code of Military Law.

4 **SEC. 8. SECRETARY OF DEFENSE REPORT ON ROLE OF**
5 **COMMANDERS IN MILITARY JUSTICE PROC-**
6 **ESS.**

7 Not later than 180 days after the date of the enact-
8 ment of this Act, the Secretary of Defense shall submit
9 to the Committees on Armed Services of the Senate and
10 the House of Representatives a report containing an as-
11 sessment of the current role of commanders in the admin-
12 istration of military justice and the investigation, prosecu-
13 tion, and adjudication of offenses under the Uniform Code
14 of Military Justice. Specifically, the Secretary of Defense
15 shall assess the post-trial authority of a commander under
16 section 860 of title 10, United States Code (article 60 of
17 the Uniform Code of Military Justice), as amended by sec-
18 tion 2, and include in the report a recommendation re-
19 garding whether this authority should be further modified
20 or repealed.

○