

114TH CONGRESS
2D SESSION

S. 2870

To amend title 10, United States Code, to prevent retaliation in the military,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2016

Mrs. McCASKILL (for herself and Mrs. ERNST) introduced the following bill;
which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to prevent retaliation
in the military, 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.**

4 This Act may be cited as the “Military Retaliation
5 Prevention Act”.

6 **SEC. 2. PUNITIVE ARTICLE ON RETALIATION UNDER THE**
7 **UNIFORM CODE OF MILITARY JUSTICE.**

8 (a) PUNITIVE ARTICLE.—Subchapter X of chapter
9 47 of title 10, United States Code (the Uniform Code of

1 Military Justice), is amended by inserting after section
 2 133 (article 133) the following new section (article):

3 **“§ 933a. Art. 133a. Retaliation**

4 “(a) IN GENERAL.—Any person subject to this chap-
 5 ter who, with the intent to retaliate against any person
 6 for reporting or planning to report a criminal offense, or
 7 making or planning to make a protected communication,
 8 or with the intent to discourage any person from reporting
 9 a criminal offense or making a protected communication—

10 “(1) wrongfully takes or threatens to take an
 11 adverse personnel action against any person; or

12 “(2) wrongfully withholds or threatens to with-
 13 hold a favorable personnel action with respect to any
 14 person;

15 shall be punished as a court-martial may direct.

16 “(b) DEFINITIONS.—In this section:

17 “(1) The term ‘protected communication’
 18 means the following:

19 “(A) A lawful communication to a Member
 20 of Congress or an Inspector General.

21 “(B) A communication to a covered indi-
 22 vidual or organization in which a member of the
 23 armed forces complains of, or discloses informa-
 24 tion that the member reasonably believes con-
 25 stitutes evidence of, any of the following:

1 “(i) A violation of law or regulation,
 2 including a law or regulation prohibiting
 3 sexual harassment or unlawful discrimina-
 4 tion.

5 “(ii) Gross mismanagement, a gross
 6 waste of funds, an abuse of authority, or
 7 a substantial and specific danger to public
 8 health or safety.

9 “(2) The term ‘Inspector General’ has the
 10 meaning given that term in section 1034(h) of this
 11 title.

12 “(3) The term ‘covered individual or organiza-
 13 tion’ means any recipient of a communication speci-
 14 fied in clauses (i) through (v) of section
 15 1034(b)(1)(B) of this title.

16 “(4) The term ‘unlawful discrimination’ means
 17 discrimination on the basis of race, color, religion,
 18 sex, or national origin.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
 20 at the beginning of subchapter X of chapter 47 of such
 21 title is amended by inserting after the item relating to sec-
 22 tion 933 (article 133) the following new item:

“933a. Art. 133a. Retaliation.”.

23 **SEC. 3. REPORT TO COMPLAINANTS OF RESOLUTION OF IN-**
 24 **VESTIGATIONS INTO RETALIATION.**

25 (a) REPORT REQUIRED.—

1 (1) IN GENERAL.—Under regulations prescribed
2 by the Secretary of Defense, the results of an inves-
3 tigation by an office, element, or personnel of the
4 Department of Defense or the Armed Forces of a
5 complaint by a member of the Armed Forces of re-
6 taliation shall be reported to the member, including
7 whether the complaint was substantiated, unsubstan-
8 tiated, or dismissed.

9 (2) MEMBERS OF COAST GUARD.—The Sec-
10 retary of Homeland Security shall provide in a simi-
11 lar manner for reports on the results of investiga-
12 tions by offices, elements, or personnel of the De-
13 partment of Homeland Security or the Coast Guard
14 of such complaints made by members of the Coast
15 Guard when it is not operating as a service in the
16 Navy.

17 (b) RETALIATION DEFINED.—In this section, the
18 term “retaliation” has the meaning given the term by the
19 Secretary of Defense in the strategy required by section
20 539 of the National Defense Authorization Act for Fiscal
21 Year 2016 (Public Law 114–92; 129 Stat. 818) or a sub-
22 sequent meaning specified by the Secretary.

1 **SEC. 4. TRAINING FOR DEPARTMENT OF DEFENSE PER-**
2 **SONNEL ON SEXUAL ASSAULT TRAUMA IN IN-**
3 **DIVIDUALS CLAIMING RETALIATION IN CON-**
4 **NECTION WITH REPORTS OF SEXUAL AS-**
5 **SAULT IN THE ARMED FORCES.**

6 (a) **IN GENERAL.**—The Secretary of Defense shall
7 ensure that the personnel of the Department of Defense
8 specified in subsection (b) who investigate claims of retal-
9 iation in connection with reports of sexual assault in the
10 Armed Forces receive training on the nature and con-
11 sequences of sexual assault trauma. The training shall in-
12 clude such elements as the Secretary shall specify for pur-
13 poses of this section.

14 (b) **PERSONNEL.**—The personnel of the Department
15 of Defense specified in this subsection are the following:

16 (1) Personnel of military criminal investigation
17 services.

18 (2) Personnel of Inspectors General offices.

19 (3) Personnel of any command of the Armed
20 Forces who are assignable by the commander of
21 such command to investigate claims of retaliation
22 made by or against members of such command.

23 (c) **RETALIATION DEFINED.**—In this section, the
24 term “retaliation” has the meaning given the term by the
25 Secretary of Defense in the strategy required by section
26 539 of the National Defense Authorization Act for Fiscal

1 Year 2016 (Public Law 114–92; 129 Stat. 818) or a sub-
2 sequent meaning specified by the Secretary.

3 **SEC. 5. INCLUSION IN ANNUAL REPORTS ON SEXUAL AS-**
4 **SAULT PREVENTION AND RESPONSE EF-**
5 **FORTS OF THE ARMED FORCE OF INFORMA-**
6 **TION ON COMPLAINTS OF RETALIATION IN**
7 **CONNECTION WITH REPORTS OF SEXUAL AS-**
8 **SAULT IN THE ARMED FORCES.**

9 Section 1631(b) of the Ike Skelton National Defense
10 Authorization Act for Fiscal Year 2011 (10 U.S.C. 1561
11 note) is amended by adding at the end the following new
12 paragraph:

13 “(12) Information on each claim of retaliation
14 in connection with a report of sexual assault in the
15 Armed Forces made by or against a member of such
16 Armed Force as follows:

17 “(A) A narrative description of each com-
18 plaint.

19 “(B) The nature of such complaint, includ-
20 ing whether the complainant claims professional
21 or social retaliation.

22 “(C) The gender of the complainant.

23 “(D) The gender of the individual claimed
24 to have committed the retaliation.

1 “(E) The nature of the relationship be-
2 tween the complainant and the individual
3 claimed to have committed the retaliation.

4 “(F) The nature of the relationship, if any,
5 between the individual alleged to have com-
6 mitted the sexual assault concerned and the in-
7 dividual claimed to have committed the retalia-
8 tion.

9 “(G) The official or office that received the
10 complaint.

11 “(H) The organization that investigated or
12 is investigating the complaint.

13 “(I) The current status of the investiga-
14 tion.

15 “(J) If the investigation is complete, a de-
16 scription of the results of the investigation, in-
17 cluding whether the results of the investigation
18 were provided to the complainant.

19 “(K) If the investigation determined that
20 retaliation occurred, whether the retaliation was
21 an offense under chapter 47 of title 10, United
22 States Code (the Uniform Code of Military Jus-
23 tice).”.

1 **SEC. 6. METRICS FOR EVALUATING THE EFFORTS OF THE**
2 **ARMED FORCES TO PREVENT AND RESPOND**
3 **TO RETALIATION IN CONNECTION WITH RE-**
4 **PORTS OF SEXUAL ASSAULT IN THE ARMED**
5 **FORCES.**

6 (a) METRICS REQUIRED.—The Sexual Assault Pre-
7 vention and Response Office of the Department of Defense
8 shall establish and issue to the military departments
9 metrics to be used to evaluate the efforts of the Armed
10 Forces to prevent and respond to retaliation in connection
11 with reports of sexual assault in the Armed Forces.

12 (b) BEST PRACTICES.—For purposes of enhancing
13 and achieving uniformity in the efforts of the Armed
14 Forces to prevent and respond to retaliation in connection
15 with reports of sexual assault in the Armed Forces, the
16 Sexual Assault Prevention and Response Office shall iden-
17 tify and issue to the military departments best practices
18 to be used in the prevention of and response to retaliation
19 in connection with such reports.

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