

112TH CONGRESS
1ST SESSION

S. 658

To provide for the preservation by the Department of Defense of documentary evidence of the Department of Defense on incidents of sexual assault and sexual harassment in the military, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2011

Ms. KLOBUCHAR (for herself, Ms. SNOWE, Ms. MURKOWSKI, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide for the preservation by the Department of Defense of documentary evidence of the Department of Defense on incidents of sexual assault and sexual harassment 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 “Support for Survivors
5 Act”.

1 **SEC. 2. PRESERVATION OF DOCUMENTARY EVIDENCE OF**
2 **DEPARTMENT OF DEFENSE ON INCIDENTS**
3 **OF SEXUAL ASSAULT AND SEXUAL HARASS-**
4 **MENT IN THE MILITARY.**

5 (a) IDENTIFICATION OF MEANS OF PRESERVA-
6 TION.—

7 (1) IN GENERAL.—The Secretary of Defense
8 shall, in consultation with the Secretary of Veterans
9 Affairs, identify the most appropriate and effective
10 means for the preservation by the Department of
11 Defense of documentary evidence of the Department
12 on covered incidents of sexual assault and sexual
13 harassment during the life of the victims of such in-
14 cidents. The means so identified shall be a single
15 means that is used uniformly by all the military de-
16 partments.

17 (2) DOCUMENTARY EVIDENCE.—For purposes
18 of this section, documentary evidence on covered in-
19 cidents of sexual assault and sexual harassment
20 means the following:

21 (A) All forms, reports, or other documents,
22 whether in paper or electronic form, currently
23 generated by the Department of Defense at the
24 time of, or otherwise in connection with, a re-
25 port or allegation regarding a covered incident
26 of sexual assault or sexual harassment.

1 (B) Such other form, report, or document
2 as may be established by the Secretary of De-
3 fense, in consultation with the Secretary of Vet-
4 erans Affairs, for purposes of compliance with
5 the requirements of this section as a result of
6 the work of the joint task force under para-
7 graph (6).

8 (3) REQUIREMENTS FOR MEANS IDENTIFIED.—

9 The means for the preservation of documentary evi-
10 dence identified under this subsection shall ensure
11 the following:

12 (A) The preservation by the Department of
13 Defense of documentary evidence of the Depart-
14 ment on covered incidents of sexual assault and
15 sexual harassment during the life of the victims
16 of such incidents.

17 (B) The full protection of the privacy of
18 the victims, including, where applicable, the
19 preservation of the nature of the documentary
20 evidence as restricted or unrestricted.

21 (C) Lifetime access of the victim to the
22 documentary evidence, whether or not while a
23 member of the Armed Forces, including for
24 purposes of the submittal or development of a
25 claim for benefits from the Department of Vet-

1 erans Affairs and for use in a criminal or civil
2 proceeding in connection with a covered inci-
3 dent of sexual assault or sexual harassment.

4 (D) On-going access by the Department of
5 Defense to the documentary evidence (with per-
6 sonal identifying information redacted in the
7 case of restricted reports) for purposes of re-
8 search, reporting, and training by the Depart-
9 ment regarding incidents of sexual assault and
10 sexual harassment and for such other purposes
11 as the Secretary of Defense considers appro-
12 priate.

13 (E) On-going access by the Department of
14 Veterans Affairs to the documentary evidence
15 for purposes of assisting an individual in the
16 submittal or development of a claim for benefits
17 from the Department, but only if the individual
18 expressly authorizes such access by the Depart-
19 ment for such purposes.

20 (4) METHOD OF PRESERVATION.—The means
21 for the preservation of documentary evidence identi-
22 fied under this subsection shall provide for the pres-
23 ervation of such evidence in digitized, electronic
24 form.

1 (5) UTILIZATION OF CURRENT MEANS OF PRES-
2 ERVATION.—The means for the preservation of doc-
3 umentary evidence identified under this subsection
4 may utilize or incorporate elements of databases or
5 other means of document preservation currently em-
6 ployed by the Department of Defense, subject to the
7 requirements of this subsection.

8 (6) JOINT TASK FORCE ON SUPERSEDING
9 FORM.—

10 (A) IN GENERAL.—The Secretary of De-
11 fense and the Secretary of Veterans Affairs
12 shall establish a joint task force for purposes of
13 recommending to the Secretary of Defense
14 whether or not to establish under paragraph
15 (2)(B) a form, report, or document to be gen-
16 erated by the Department of Defense in lieu of
17 the forms, reports, and documents described in
18 paragraph (2)(A). The task force shall be com-
19 posed of officers and employees of the Depart-
20 ment of Defense and the Department of Vet-
21 erans Affairs appointed to the task force by the
22 Secretary of Defense and the Secretary of Vet-
23 erans Affairs, as applicable.

24 (B) REPORT.—The joint task force shall
25 submit to the Secretary of Defense and the Sec-

1 retary of Veterans Affairs a report setting forth
2 the recommendation of the task force under
3 subparagraph (A). If the recommendation is to
4 establish a form, report, or document, the re-
5 port shall include a proposal for such form, re-
6 port, or document.

7 (7) REPORT.—Not later than 180 days after
8 the date of the enactment of this Act, the Secretary
9 of Defense shall submit to Congress a report on the
10 means for the preservation of documentary evidence
11 in covered incidents of sexual assault and sexual
12 harassment identified under this subsection. The re-
13 port shall set forth the following:

14 (A) A comprehensive description of the
15 means for the preservation of documentary evi-
16 dence identified under this subsection.

17 (B) A description of the work of the joint
18 task force under paragraph (6), including the
19 form, report, or document, if any, to be estab-
20 lished under paragraph (2)(A) as a result of
21 such work.

22 (C) A plan for the implementation of the
23 means so identified by the Department of De-
24 fense.

1 (D) Such recommendations for additional
2 legislative or administrative action as the Sec-
3 retary considers appropriate.

4 (b) IMPLEMENTATION OF IDENTIFIED MEANS OF
5 PRESERVATION.—

6 (1) IN GENERAL.—The Secretary of Defense
7 shall provide for the implementation by the military
8 departments of the means for the preservation of
9 documentary evidence on covered incidents of sexual
10 assault and sexual harassment identified under sub-
11 section (a) by not later than 18 months after the
12 date of the enactment of this Act. If the Secretary
13 establishes a form, report, or document under sub-
14 section (a)(2)(B), the means so implemented shall
15 provide for the preservation of such evidence uti-
16 lizing such form, report, or document.

17 (2) INTERIM MEANS.—If the means for the
18 preservation of documentary evidence identified
19 under subsection (a) is not fully implementable by
20 the deadline specified in paragraph (1), the Sec-
21 retary shall implement such means to the extent
22 practicable, but may utilize additional appropriate
23 means for the preservation of such evidence (includ-
24 ing the preservation of such evidence in paper form)

1 on an interim basis pending the full implementation
2 of such means.

3 (3) REPORTS.—Not later than one year after
4 the completion of the implementation of the means
5 for the preservation of documentary evidence by the
6 military departments under paragraph (1), and
7 every year thereafter for the next two years, the Sec-
8 retary of Defense shall submit to Congress a report
9 on the implementation of the means for the preser-
10 vation of documentary evidence. Each report shall
11 set forth the following:

12 (A) A current description and assessment
13 of the implementation by the military depart-
14 ments of the means for the preservation of docu-
15 mentary evidence.

16 (B) For the one-year period ending on the
17 date of such report, the following:

18 (i) In consultation with the Secretary
19 of Veterans Affairs, a statement of the
20 number of individuals who sought docu-
21 mentary evidence preserved by such means
22 for the submittal or development of a claim
23 for benefits from the Department of Vet-
24 erans Affairs.

1 (ii) A description and assessment of
2 efforts to inform members of the Armed
3 Forces regarding the preservation of docu-
4 mentary evidence on covered incidents of
5 sexual assault and sexual harassment and
6 of means for accessing evidence so pre-
7 served.

8 (C) Such recommendations for additional
9 legislative or administrative action as the Sec-
10 retary of Defense considers appropriate.

11 (c) DEFINITIONS.—In this section:

12 (1) The term “covered incident of sexual as-
13 sault or sexual harassment” means an incident of
14 sexual assault or sexual harassment in which a
15 member of the Armed Forces is the victim.

16 (2) The term “sexual assault” means the fol-
17 lowing:

18 (A) Rape.

19 (B) Sexual assault.

20 (C) Any other sexual misconduct covered
21 by section 920 of title 10, United States Code
22 (article 120 of the Uniform Code of Military
23 Justice).

24 (D) Sodomy.

1 (E) Any other intentional sexual contact,
2 characterized by use of force, threats, intimidat-
3 tion, abuse of authority, or when the victim
4 does not or cannot consent.

5 (F) Any other unwanted sexual contact
6 that is aggravated, abusive, or wrongful, includ-
7 ing unwanted and inappropriate sexual contact.

8 (G) Any attempt to commit an act speci-
9 fied in subparagraphs (A) through (F).

10 (3) The term “sexual harassment” means sex-
11 ual discrimination that involves unwelcome sexual
12 advances, requests for sexual favors, or other verbal
13 or physical conduct of a sexual nature when—

14 (A) submission to or rejection of such con-
15 duct is made either explicitly or implicitly a
16 term or condition of a person’s service, pay, or
17 retention or promotion in the Armed Forces;

18 (B) submission to or rejection of such con-
19 duct by a person is used as a basis for decisions
20 affecting the person’s service, pay, or retention
21 or promotion in the Armed Forces; or

22 (C) such conduct interferes with a person’s
23 performance of duty in the Armed Forces or

- 1 creates an intimidating, hostile, or offensive en-
- 2 vironment for the performance of such duty.

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